INTER-STATAL LAW

THE LAW AFFECTING THE RELATIONS OF THE INDIAN STATES WITH THE BRITISH CROWN

SUNDARAM AYYAR—KRISHNASWAMI AYYAR LECTURES, 1933-34

BY

SARDAR K.M. PANIKKAR, B.A., (OXON), BARRISTER-AT-LAW,

Foreign Minister, His Highness' Government, Patiala, & Secretary to His Highness the Chancellor, Chamber of Princes.

UNIVERSITY OF MADRAS

Price Re. 1/-

CONTENTS.

PREFACE.

These lectures which were delivered at the invitation of the Syndicate of the Madras University on the Sundaram Aiyar-Krishnaswamy Aiyar foundation, represent an attempt to bring to the notice of the public the more detailed aspects of the relations of the Government of India with the States. Inspite of much that has been written on the States within the last few years on the general problem of the States, it is not too much to say that the development of the public law of India on the questions discussed in these lectures has not attracted the attention it deserves. Since Sir William Lee-Warner wrote his Native States of India—which is still a classic from the point of view of the Government—the position in regard to most of these questions has materially changed. Besides, Lee-Warner's book was essentially political, and it devoted but little attention to the problems of inter-statal law. Another book of importance which deals with the legal aspects of the problem of the States is Sardar D. K. Sen's "Indian States." The distinguished author of this work who is now the Chief Minister of Mandi has brought to the discussion of the nature of Indian sovereignty a profound knowledge of international law and wide experience of the affairs of the Indian States. It is a book which is invaluable to the students of Indian public law. But apart from these treatises, the main source of Indian inter-statal law as it has developed is the four volumes of evidence

submitted to the Butler Committee on behalf of the Princes. In these four volumes which cover more than 4000 pages of closely printed sheets of foolscap the Directorate of the Princes' Special Organisation has collected together much material which had lain buried in the archives of Indian States. Those who desire to acquaint themselves fully with the Public Law of India will find in them all the available material collected, arranged and analysed in the most efficient manner.

It should however be mentioned that the material contained in the volumes of Evidence only represents the point of view of the Princes. The memoranda and other material placed by the Government of India before the Committee have not been made available either to the Princes or to the Public. But on many of the questions discussed here, the attitude of the Government is inferable from its actions and also from the documents which have come to light in important controversies.

The present lectures, I need hardly add, touch only the fringe of a very vast and difficult subject. I have not tried to discuss the law relating to many of the questions in detail but merely to indicate the lines on which people interested in the problem might pursue their studies. I desire to emphasise that the views put forward are purely personal and they are in no way to be connected with the official position which I hold.

It only remains for me to acknowledge my obligations. To His Highness the Maharaja Dhiraj of Patiala, the Chancellor of the Chamber of Princes, I

am deeply grateful for permitting me to deliver these lectures. These lectures were rendered possible by the generosity of Alladi Sir Krishnaswami Aiyar, Advocate-General of Madras, whose interest in the study of inter-statal and international law was responsible for the endowment of the Sundaram Aiyar-Krishnaswamy Aiyar lectureship. To Col. Sir Kailas Haksar formerly the Director of the Prince's Special Organisation and now Political Member of the Gwalior Government, from whom I first learnt my lessons in this subject, my obligations are more than I can ever repay.

COUNCIL HALL,
DELHI

K. M. PANIKKAR

LECTURE I.

THE NATURE AND SOURCES OF INTER-STATAL LAW.

The existence in India of a large number of States under the paramountcy of the Crown creates problems in law and politics which are peculiar to India. The life of nations, even when they are absolutely independent, touches and intersects at many points, economic, political and social. The regulation of these relations according to a body of agreements, usage and principle is what is known as International Law. In India owing to the fact that geographically the States are parts of the same country and are divided only by political lines, the points of contact are more numerous and the periphery of relations much larger. Economically India is a single entity; its geographical unity is undeniable; even politically it is, as Lord Canning put it, for many purposes "a single charge." Naturally the relations between the Indian States among themselves on the one hand and with British India on the other are more intimate; in fact no independent social, economic or political life is possible for any Indian State or even for British India. The necessity for a systematic regulation of these relations was therefore obvious from the beginning of the effective establishment of British Empire in India. It is this regulation, comprising of the general body of agreement, usage and principle, that is meant by the term inter-statal law in these lectures.

Inter-statal law such as we have defined here differs equally from municipal law and from international law. Municipal law is enforceable in ordinary courts through recognised processes. It is a body of regulations clearly laid down, systematised and equally applicable to all. Inter-statal law is, on the other hand, not directly recognised by municipal courts and is enforceable only by executive order. In the case of the Rani of Tanjore[1] it was laid down that the transactions between Indian States and the Paramount Power " are governed by other laws than those which municipal courts administer. Such courts have neither the means of decreeing what is right, nor the power of enforcing any decision which they might make." International law, on the other hand, has no sanction except that of war and the moral conscience of parties. In this it differs from inter-statal law in India whose sanction rests on the undenied paramountcy of the British Crown. This difference between inter-statal and international laws, though important, is not fundamental. The tendency during the last few years has been to create both a national and an international sanction for the Law of Nations. In England and America international law has been treated as an integral part of the municipal law of the country. In *re paquet Habana,*[2] the Supreme Court of the United States held that the principles of international law must be ascertained and applied by Municipal Courts

1 Kamachi Bayi Sahiba of Tanjore *v.* The Secretary of State, 1859. Maharaja Madhana Singh *v.* The Secretary of State for India in Council. 31. I.A. 239.

2 United States Supreme Court decisions 175—627—1899.

when neither treaties nor express provisions of municipal law guide them. The Court further stated explicitly that "Inter-national law is a part of our law."

Again in the *Zamora* case the Privy Council held that though the Prize Courts are municipal courts, the law administered is international law, the committee going to the extent of affirming that these courts were in no way bound by executive orders going against international law.

The German and Austrian constitutions expressly give adhesion to this theory. More recently the covenant of the League of Nations has attempted to provide an ultimate sanction to Inter-national law. The establishment of the Permanent Court of International Justice at the Hague and the constitution of the Central American Court provide additional evidence to the growth of the principle of sanction behind international law. Even before the present machinery for giving effect to the rules of International law was established, Mr. Root had pointed out "that the difference between municipal and international law in respect of the existence of forces compelling obedience is more apparent than real, and there are sanctions for the enforcement of international law no less real than those which secure obedience to municipal law".[3]

International and interstatal laws are fundamentally alike in that both imply a limitation on the absolute sovereignty of the State. The old international law was based on the conception of the

3 Root: Sanction of International Law. Proceedings of the American Society of International Law—1908. p. 14.

absolute right of each State to follow the dictates of its own interests. It was therefore argued with justice that international law was no law at all. In fact from the time of the breakdown of the internationally binding authority of the Catholic Church to the development of modern supra-national political consciousness, international law was merely a body of pious principles which the strong nations defied and weak nations appealed to. But in recent times this ideal of *"individualism etatique"* has found a limitation as strict as when Hildebrand or Innocent III ruled the conscience of Europe. For almost three centuries from the time of the Reformation the principle of independence governed the law of nations; the principle of independence meant also the principle of theoretical equality. But during the last half a century the rival principle of the interdependence of the States with its corollary of the practical inequality of power and authority among them, necessitating the establishment of arbitral and judicial tribunals has held the field. The establishment of the League of Nations, taking in a political sense the moral authority which belonged to the Holy Church from the time of Gregory the Great to the Reformation, is the visible expression of an effective limitation of the sovereignty of States. The organization of international life is clearly irreconcilable with the Austinian notion of sovereignty which idealised the national individualism of peoples.

The present conception of national sovereignty is therefore one that accepts a *division* between the

reserved sphere of independence and the surrendered sphere of international obligations. In the regions where international law becomes more and more effective the liberty of the States is correspondingly limited. What is happening in international life to-day is a repetition, on a larger scale and under different circumstances, of the conditions of interstatal life in India. The surrender of certain spheres of activity to the dominion of interstatal activity has correspondingly limited the reserved authority of the States. It is true that the machinery and agency of interstatal action in India are concentrated in a paramount power: that only disguises but does not take away from the essential fact that the limitation of the States' authority has been for the purpose of a fuller and more vigorous interstatal life.[4]

It will therefore be seen that essentially there is no difference between Inter-national law and Inter-statal law in India. In fact inter-statal law is a part of the large body of principles which regulate the conduct in a family of States. It should be remembered that international law has not developed as a single code applicable to the whole world but as a body of rules and regulations specially arising from the relations of States in particular areas. Thus there is a public law of Europe arising from the special conditions of that continent which is not applicable to America or to Asia. There are various international

4 See "Le problems des limitations de la souverainté—Collection de la cour de l'academie de droit inter-national de Haye". Tome VI. 1925.

problems and situations peculiar to the European comity such as the control of the Rhine and the Danube which give rise to multilateral agreements accepted as being part of the Public Law of Europe. Similar is the case with Latin America. There is a special American inter-national law, the principles and methods of which would not be applicable to Europe.[5] In the same way, the special political conditions of India have given rise to a branch of international law with different principles and methods to those which are known in the West. But indubitably it is international law, in the sense that it is the regulation of relations between States, based on principles of comity, agreement and usage. When the Government of India laid down in the Manipur Resolution that the principles of international law are not applicable to the relations between the paramount power and the Indian States, all that was meant and could have been meant was that the principles of international law as understood in Europe between absolutely independent states is not applicable to Indian conditions. To give that declaration a wider meaning is to say that the Crown in India is not bound by its treaties to Indian States and that the Government of India in its relations with them are guided by no principles.

The public law of India is therefore a part of the international law of the world. It is incorrect to say that it is merely based on the whim and caprice of an all-powerful paramount power which disobeys accepted principles when it does not suit its interests.

5 For a discussion of this question, see Alvarez—Le droit International Americaine. 1910.

The outstanding fact in regard to the Indian family of States is that it has a *pater familias,* who has the power as well as the right to enforce the public law of India. Its power is obvious; the might and resources of the Crown are such that no Indian State or combination of States can resist them. Its right is not so obvious. But no one who has given thought to the question would deny that in certain matters, such as the prevention of private war, the maintenance of strategic communications, defence, succession, permanence of dynasties, etc., the paramount power has the right to enforce the public law of India. This right follows from the delegation by the Indian States to the paramount power of their authority in matters of external policy and of defence. If it is the obligation of the British Government to protect the States from external aggression and internal rebellion, it is clearly the right of that Government to prevent private war between the States and civil war within them, to take the necessary action, such as the establishment and maintenance of strategic lines of communication, to enable it to defend the States from external invasion and to accept on behalf of the States the conventions of international comity. It should however be realised that in doing this, the British Government is fulfilling an inter-statal function, more or less in the same manner as the League of Nations.

The *corpus* of Indian public law has come into existence as a result of agreement and of growth. It is mainly based on treaties, sanads and other written documents, but is also derived from valid usage and

convention. It is well known that the relations with States are governed by treaties. The conditions and circumstances in which these treaties were negotiated may be studied elsewhere. It is sufficient here to state that they constitute the main source of the public law of India. But most of these treaties were negotiated over a century ago and record agreements not applicable in their entirety at the present day. The conditions of interstatal life have so changed beyond recognition during the last 100 years that to base the public law of India exclusively on the treaties would lead to results which would be unacceptable to the States no less than to the Government of India. In so far as the treaties secured certain fundamental rights to the States, they are undeniably inviolable; but as instruments regulating in detail the relations between States, the treaties like other agreements must be adjusted to circumstances. The historical evolution of peoples and states cannot be regulated by the written word. If sacredness and inviolability are attached to written documents, the course of evolution will take, as Sir Henry Maine pointed out long ago, the form of legal fiction. The attempt to consider the treaties as the sacrosanct repositories of Indian public law, though explicable in the light of the natural anxiety of the Indian Rulers to safeguard their position, has been the cause of much underground development which has invisibly eaten into the substance of the treaties. For as an eminent English Jurist says "though the obligations of treaties are perpetual so far as the utterances of international

law are concerned,[6] it is clear that they cannot remain unchanged for ever. No one now proposes to go back to the treaties of Munster or Utrecht and few would consider it desirable to return to the stipulations enacted at Vienna..... As circumstances alter, the engagements made to suit them go out of date. ..... International law does not certainly give a right of veto on political progress to any reactionary member of the family of nations who can discover in its archives some obsolete treaty on the fulfilment of whose stipulations it insists against the wishes of all signatories". It is therefore no doubt true that the Indian treaties though they are permanent alliances are like other international engagements subject to modifications by valid usage and convention. But at the same time it is not true to subscribe to the view accepted by Hall that the Indian treaties "really amount to little more than limitations which the Imperial Government, except in very exceptional circumstances, places on its own action. No doubt this was not the original intention of many of the treaties but the conditions of English sovereignty in India have greatly changed since these were concluded and the modifications of their effect which the changed conditions have rendered necessary are thoroughly well understood and acknowledged." It is certainly true that the *conditions* of English sovereignty in India have changed but its

6 It is the essential principle of the law of nations that no power can liberate itself from the engagements of a treaty nor modify the stipulation thereof unless with the consent of the contracting powers by means of an amicable arrangement. (Protocols of London Conference, 1871, p. 7)

nature in relation to the Indian States has not undergone change. Its authority is still acknowledged to be that of a paramount power and not of a sovereign. It is also true that the treaties have in many cases been modified but they remain as they originally were, solemn agreements between two States. They do not embody merely the discretionary limitations on the British Crown. They are obligations undertaken for consideration and cannot be modified by the unilateral acts of the Crown. The modification of the treaties has taken place by the consent or the acquiescence of the States due to the compelling force of historical evolution; and those which no doubt limit the operations of the treaties are contained in the body of valid usage and convention accepted by the States.

It is accepted both in municipal and in international law that usage can modify the operation of written agreements. But in order to do so it must fulfil certain conditions. In 1877 the Government of India itself laid down the proper sphere of usage as follows:—

"In the life of States as well as of individuals documentary claims may be set aside by overt acts and a *uniform and long continued course of practice acquiesced in by the party against whom it tells,* whether the party be the British Government or the Native State, must be held to exhibit the relations which in fact subsist between them."[7] The same principle is thus expressed by Lord Bryce.[7a] Usage in order to be

7 Italics added: quoted in the Butler Report Comd., 3302. 1929.

7a Bryce—Roman and English Legislation Studies, p. 673.

valid must have "a certain extension in time and a certain extension in space. It must have prevailed over so long a period that no one can deny its existence. It must have prevailed over so wide an area.....that it cannot be alleged to be a mere local usage."

It was the practice of the Government of India in the past to claim general validity for usages developed under different circumstances as modifying treaties. Sir Robert Holland in a letter to the Princes of Rajputana (dated 27th March 1920) admitted frankly that "precedents evolving under special circumstances in individual States were declared without proper scrutiny or due consideration to be applicable to States as a body." It is clear that usage as a source of interstatal law can be made to give rise to a general body of Rules only in certain very special circumstances. Usage by its very nature must be developed in an individual State and its application to other States as a matter of principle is based on the assumption, admittedly false, that the relationship of all the States with the Government of India is of a uniform nature. The position of each State being different from that of any other, a usage developed in one state cannot be made applicable to States as a whole. There is undeniably a legitimate, though limited sphere for usage in the relations between the States and the Government. That sphere in regard to each state embraces those subjects on which the treaty is either silent or a written agreement has not been reached. In regard to the States as a whole such usages may develop in those spheres which are within the exclusive

cognizance of the paramount power. An instance of the former is the practice established regarding extradition with those States which have no extradition treaty. An example of the latter is the practice by which the Crown grants titles to Indian Rulers and their subjects.

Usage as a source of inter-statal relationship comes also into prominence in the privileges enjoyed by certain States which are not in conformity with their treaties or engagements. Thus the desuetude into which certain rights of suzerain states in regard to their tributaries have fallen can be justified only on the ground of usage. Numerous examples can be quoted to show that mediated States like Ratlam, former tributaries like Jaora and the Kathiawad States have benefited by the operation of this principle.

Another important source of inter-statal law is convention. A convention differs from a treaty in the sense that it is an agreement arrived at for the solution of a general problem affecting all the states or a group of states. After the principle of codification has been accepted, the Resolutions issued by the Government of India are really conventions rather than orders of Government. Thus the Minority Resolution though in form an order of the Government of India is the embodiment of an agreement arrived at by discussion with the Princes. This method of convention is a growing and important source of Indian public law which will, it is hoped, in course of time define and regularise the rights assumed by the Government of India by its "Orders" in days when it thought it had the authority to do so.

Certain writers, especially Lee Warner, have claimed Paramountcy as a source of Political practice. This is not the occasion to discuss at length the extent and limitation of paramountcy but it is clear that if the authority of a state can be limited by the exercise of an undefined authority vested in another, then, the subordinate state has no permanent inherent rights left. Paramountcy therefore cannot be a source of law in India. It may provide the method of declaring that law and enforcing it.

The word, 'paramountcy', is merely the expression denoting the position in which an Indian State stands to the Crown. That position is ascertained by treaties and valid practice. It is only applicable to the ascertained position and is not a theory to cover vague and undefined claims. The extent of paramountcy differs with each state according to the clauses of its treaty and the practices which have developed by agreement or acquiescence. Being thus a definite complex of known powers, paramountcy cannot be a source of further authority.

Besides these, there are certain "natural sources" from which obligations and duties arise in public law. Thus it is a duty arising from the right of the independence of each that the people or the Government of a State should not unnecessarily interfere in the affairs of another; that each should respect the rights, privileges and dignities of all other States as it does its own. As the States belong to a family, the rights of peaceful communication, of trade, of the utilisation of common

natural resources like rivers, lakes (not being exclusively within one State) follow naturally. Again it is part of the duty of States not to harbour criminals or to encourage or connive at inhuman practices or traffic in human beings. The natural sources of the inter-statal law are however difficult to define precisely. There will always remain a margin which the increasing force of moral opinion will claim as coming definitely within the sphere of inter-statal law. Within the last few years, traffic in dangerous drugs, obscene publications, etc., have been brought within this sphere, though not without opposition.

The fundamental problem of Indian inter-statal law, it will be recognised from the above discussion, is the regulation of economic, political and social relations of a country in which the sense of national unity is fast asserting itself. The public law of India is a working method of adjusting the claims of internal autonomy of the States, guaranteed to them by their treaties, with the stern logic of political circumstances, asserting itself in spite of the juristic and political division of the country. The political law of India arose and shaped itself under the pressure of administrative unification. Its modification has become necessary by the pressure of the growing ideas of national unity. This feeling of national unity has, it should be remembered, two aspects: one, the demand that the States, though enjoying internal sovereignty, are parts of India and should therefore share in the common benefits and responsibilities of Indian Nationhood. The second is the feeling that since the States can no longer be considered foreign

territories, the public law affecting them should be modified so as to enable them to take their just share in moulding it.

The adaptation of the old rules and practices constituting the *corpus* of Indian public law to the new conditions is the most important problem that faces the States, British India and the Paramount Power. The lack of appropriate organs for changing the existing rules and the absence of a machinery to decide judicially the validity of usage, practice, etc., constitute the main difficulties in the way of a satisfactory evolution of Indian State law. The present system, as even a casual observer would notice, is extremely chaotic and is governed by special usage, divergent practice and individual treaties. For example, with regard to the question of postal arrangements, the present law is bewildering in its confusion. There are States with conventions (e.g. Gwalior and Patiala); States which are entitled to the free carriage of government mail (e.g. Mysore); States which receive a specified amount of free sevice stamps (e.g. Kashmir); States which run their own internal posts (e.g. Hyderabad, Travancore). The currency arrangements are no less divergent, while so far as customs duties are concerned, it is almost an impossible task to formulate an all-Indian public law. The tendency however is towards unity. It is felt no less by the States than by British India that in matters affecting India in common, a uniformity of practice is desirable, so long as the States are treated equitably and their share in the revenue is given to them. The replacement of multifarious bilateral agreements by a

single convention would therefore be cordially welcomed by all interested in the future of India. An attempt is now being made by the Political Department in conjunction with the Princes to "codify" the law on many subjects, and this codification should impart to the present chaotic mass of divergent practice a form and shape, welcome to the students of constitution. The political conditions in India are fast changing. The most obvious feature of this process of change is the spirit of nationalism. More; the unseen changes of economic and social life, more important than the ebullitions of political feeling, have created a unity in the national life of India. This unity is finding expression in the demand for inter-statal regulation of many activities which had so far been considered to be within the exclusive sphere of the Paramount Power, such for example as transit, railway communication, customs, post, etc. The awakening of the Princes to their rights and their organization into an Order have given an additional impetus to this movement. The desire of British India for a Federal Indian Dominion and the unifying process of the modern time spirit have helped to bring the sphere of inter-statal law under discussion. These movements have freed the subject from the bias of paramountcy on the one hand and of the exclusive rights of state sovereignty on the other. The subject may now be studied from the impartial point of view of history and law.

LECTURE II.

THE LAW RELATING TO SOVEREIGNTY.

In India, as in other realms of inter-statal law, the problems that require regulation in the relations between states can be classified under the headings of independence, property, jurisdiction, judicial and administrative co-operation and personal status. Before we enter on a detailed discussion of each of these subjects certain special features of the family of Indian States should be noticed.

The number of Indian States is a fixed one since the Mutiny of 1857. After the assumption by the Crown of the direct Government of India, no State has been annexed, nor any, if we exclude Kalat and the frontier Chiefs, taken into the Indian political system. The Sanads of 1862 announced to the States the Crown's intention of respecting the rights of the States and of maintaining their dynasties in perpetuity. It was declared that Her Majesty was "desirous that the governments of the several Princes and Chiefs of India who now govern their own territories should be perpetuated." The number of States cannot therefore diminish. This policy has modified the Indian State Law in numerous ways especially by the restrictions on the independence of the States which we shall analyse later. Here it is sufficient to notice that no State can be annexed, nor dynasty dispossessed by the Paramount Power except under the most exceptional circumstances.

Whether the Crown has the right of "creating" an Indian state is a more difficult question. So far

there has been no case of a new state being called into existence by the British Crown. The instances of Mysore and Benares have sometimes been quoted to show that the Crown has this power and can create new states. But these examples do not prove the existence of such a power. Mysore was taken over in 1835 according to a special provision in the treaty of 1799 but it was never annexed to British India. It was administered in the name of the Maharajah who was recognised to be the sovereign of the State. In 1885 when the State was returned to him, it was so done in virtue of his recognised sovereignty. It was in fact and in name a rendition. In the case of Benares also it was merely a *restoration* of the State to the Ruling Family whose sovereignty over the area was always acknowledged. The Company only assumed the administrative powers over the territories of the Raja in 1794, by agreement with the then Ruler. The Maharaja of Benares was recognised as a sovereign Ruler even when his dominions were administered by the Crown. He had a salute of 13 guns and was given a Sanad of adoption. In 1872 Lord Northbrook declared:—

"In the opinion of His Excellency the Viceroy and Governor-General in Council the Maharajah of Benares both before and after the cession of the Province by the Government of Oudh and both before and after the agreement of 1781 was a Ruling Prince possessed of a limited internal sovereignty."[1]

1 Proceedings of the Government of India in the Foreign Department No. 256|R. of October 4, 1872,

It will therefore be seen that the Benares case was also a restoration and does not in any way support the view that the Crown can create an Indian State.

No sovereign can invest another person with sovereign powers. It is no doubt true that a sovereign can surrender territory to another and by this surrender recognise the sovereignty of the grantee over the tract granted. But it will no more be a creation because the agreement, treaty or instrument by which the new state comes into existence presupposes the independence of the person with whom the agreement is made. There are numerous instances of the establishment of new states in recent times. Sherif Hussain of Jeddah was *recognised* as an independent Ruler by the British Government; Iraq was constituted as a sovereign State. In Europe, Poland, Czecho-Slovakia and the Baltic States were established by the treaties of Versailles. But in every case the state so established is a party to the agreement by which it is established. It is of the essence of sovereign status that its authority can be limited only by its agreement. So if it is assumed that the Crown can create a state it follows that the Crown can limit at will the powers of the state so created and annex it when it chooses.

Though the Crown cannot directly create Indian States it has often followed the policy of recognising the feudatories of suzerain States as independent. Thus the mediatised Chiefs under Gwalior have during the last half a century received recognition as rulers of independent States. This process may be studied with

profit in the case of Khilchipur, Rajgarh, and other territories which are now recognised as Indian States.

Khilchipur was subordinate to the Gwalior Darbar and was not among the guaranteed estates. In 1844 the Gwalior Darbar by a treaty assigned territory and tributes worth Rs. 18 lacs a year for the maintenance of a contingent of troops. Khilchipur was not one of the territories assigned. Only *the tribute* that the Gwalior Darbar received from Khilchipur was assigned to the British Government.

In October 1857, the Chief of Khilchipur recognised His Highness the Maharajah of Gwalior as his suzerain. In 1868 Gwalior recognised Dewan Amar Singh as the Chief of Khilchipur and bestowed a Khilat on him.

Dewan Amar Singh died in 1899 and the Resident communicating his demise to the Maharajah of Gwalior enquired "If His Highness the Maharajah Scindia has any objection to urge to Bhawani Singh's recognition as Rao of Khilchipur."

The Darbar replied that they had no objection to the recognition as successor of Dewan Amar Singh but that the usual Nazrana to Gwalior must be paid.

In reply the Darbar was told that Khilchipur being a guaranteed Chief-ship of the second class as defined on page 5 of Aitchison's Volume IV, it is not proposed that any Nazrana should be paid on this occasion. The Agent to the Governor noted that the Gwalior Darbar had no objection to Bhawani Singh's succession.

Bhawani Singh died in 1908 and the question of succession was referred to the Darbar again in similar terms.

The Darbar replied that the right of recognition of succession lay with the Darbar, that Khilchipur was not a guaranteed Chiefship.

The Resident in his reply admitted that there was no written guarantee but argued that a guarantee could be inferred from the circumstances of the case.

The claim of the Darbar was rejected and Khilchipur was declared a separate Chiefship. In this connection it is relevant to note that although in 1862 Sanads were issued to all Chiefs above the rank of Jagirdars, it was not granted to the Dewan of Khilchipur. In 1862 Khilchipur was obviously not a State, but it is now recognised as one. By the same process Jaora became independent of Indore.

The territorial extent of Indian States is definitely fixed. They cannot add to it by conquest and other processes known to International Law. But the Paramount Power can grant territory to them either by Sanad or by treaty. After the Mutiny many States were thus rewarded, e.g., Patiala and Nabha. Such grants cannot be made by administrative acts as they involve the surrender of sovereignty. Cession of territory involving the loss of sovereign power can only be made by acts of State, either by the exercise of the prerogative of the Crown or by Parliamentary legislation. This was decided in the case of Damodar Gordhann Deo

Ram Kanji.[2] The facts of this important case are as follows :—In Kathiawad the Thakur of Bhownagar possessed certain taluqas which had never been brought under ordinary British administration. In these areas the Thakur exercised wide civil and criminal jurisdiction, subject to the Political supervision of the British Agent in Kathiawad. The Thakur who was thus a Ruling Prince also owned the taluqa of Gangli which was within the British Province and was under the ordinary jurisdiction of the Bombay High Court. In 1848 Gangli was given in lease to the Thakur. By an agreement dated the 23rd October 1860, the area was transferred to the Kathiawad Agency. On the 29th of January 1866, it was notified in the Bombay Government Gazette that Gangli had been ceded to the Thakur and that it had as a result been removed from the jurisdiction of the Courts of the Bombay Presidency.

Before this notification appeared in the Gazette a decree had been passed regarding the redemption of a mortgage by a competent British Court. This matter went up to the High Court in appeal, though in the meantime the notification had appeared transferring the jurisdiction and the territory to the Thakur. The High Court however held that its jurisdiction could not be ousted by a notification. The matter came up for review before the High Court when it was held that the concurrence of Parliament was necessary for the Crown to the transfer of territory in times of peace. On appeal to the Privy Council, it was held:

2 3 Indian Appeals. 102. 1875-76.

"The jurisdiction of the Courts of the Bombay Presidency over Gangli rested in 1866 upon British statutes and could not be taken away or altered (as long as Gangli remained British territory), so as to substitute for it any native or other extraordinary jurisdiction, except by legislation in the manner contemplated by those statutes.

The transfer of British territories from ordinary British jurisdiction to the supervision, laws and regulations of a Political Agency, by excluding such territories from the British regulations and rules theretofore in force thereunder and from the jurisdiction of all British Courts theretofore established therein, with a view to the substitution of a native jurisdiction under British supervision and control, cannot be made without a legislative Act.

Such transfer of jurisdiction even if valid, would not amount to a cession of British territory to a native State, nor would it deprive the Crown of its territorial rights over the transferred districts, or the persons resident therein of their rights as British subjects. Although Their Lordships entertained grave doubts to say no more as to the concurrence of the Imperial Parliament being necessary to effect such cession of territory, yet such a cession is a transaction too important in its consequences, both to Great Britain and to subjects of the British Crown, to be established by the above decision attributed to the Secretary of State, or by any uncertain inference from equivocal Acts."

Whether the Indian States are entitled to the position of political communities, whether they are moral and legal persons is a question which is not of practical importance now. At one time, it was held that the Indian treaties were not with the states but with individuals and that therefore the States had no juristic standing. The attitude that the Government of India took at one time of insisting on the personal responsibility of the Ruler for the affairs of his state and the refusal until recent times to recognise the administrations of States as Governments and the form of a personal memorial in case of appeal to the Governor-General or Secretary of State gave colour to this view. The fact that the treaties were made with Rulers was supposed to give strength to the opinion that the treaties were merely guarantees to the dynasty. On an examination of the position of Indian States this view would be found to be untenable. Though in many treaties the obligations of the Rulers as individuals are emphasised, there could be no doubt that the treaty is made with him as representing his State. It should be remembered that till very recent times treaties kept the form of personal relationship between Rulers. Besides, in many treaties the independence of the *State* is explicity recognised. Thus in the Udaipur treaty it is laid down that British jurisdiction will not be introduced into the principality of Udaipur. The declaration of the annexation of the Carnatic says that the alliance with the Company had enabled the Nawabs "to be acknowledged by foreign states as the allies of the British Nation."[3] Against

3 Wellesly Despatches. Owen. p. 178.

Coorg war was declared. The instrument of transfer of the Benares State to the Ruling family expressly declares that it was decided that the Family Domains of the Rajas of Benares.....should be constituted as a *State* under the suzerainty of His Majesty. At the present time the Government of India has fully conceded the point and therefore it is unnecessary to argue it further.

Besides though the states have no international relations, they still possess certain rights under international law. This may look startling but even a casual examination will prove this to be true. International law recognises that the States have their own territory. The treaties made by the British Crown are not *ipso jure* binding on Indian States. If a foreign government desired to extradite a criminal from an Indian State, it cannot proceed in accordance with the extradition treaty concluded by that Government with the British Crown. Again the subjects of Indian States are recognised in International law not as British subjects but as British protected subjects. This subordinate international position of the States has been officially and solemnly recognised by the British Government in communications addressed to other states. The Marquess of Salisbury, on the 25th of April 1896 (British and Foreign State papers, Vol. 89, p. 1053) stated:—

> "The protected States of India are not annexed to or incorporated in the possessions of the Crown. The Rulers have right of internal administration subject to the control of the protecting power for the maintenance of peace and

order and the suppression of abuses. The latter conducts all external relations. The position has been defined as that of subordinate alliance. It has, however, never been contended that if those states had had pre-existing treaties with foreign powers the assumption of protectorate by Great Britain would have abrogated those treaties. It could not have had and in no case has had such consequences."

This binding character of treaties made by Indian States with others prior to their acceptance of British paramountcy is not merely a matter of theory. For example, the State of Jammu and Kashmir had entered into treaties with Tibet and China at the time of the conquest of Ladakh by Maharaja Gulab Singh. Those treaties are even now in force, though as a result of the delegation of external relations to the British Crown, they are enforced through the medium of the British Government.

More recently the same position was recognised by Lord Birkenhead in the letter which he addressed to the Secretary-General of the League of Nations relating to the ratification of conventions by Indian States. That letter reads as follows:—

"I have the honour to inform you that, in consultation with the Government of India, I have recently had under consideration the question of the ratification by India of the draft Convention concerning Workmen's Compensation for Occupational Diseases, adopted at the International Labour Conference held at

Geneva in 1925. In so far as British India is concerned no difficulty arises as the legislation necessary to make effective the provisions of the draft Convention has recently been passed by the Indian Legislature, but for the reasons explained below ratification would not be possible if the obligations arising out of the Convention which would be assumed by the Government of India extended also to the Indian States.

2. These States number several hundreds and the great majority of them are, from the industrial point of view, undeveloped. They vary greatly in size and population and the exact relations between the various states and the Paramount Power are determined by a series of engagements and by long-established political practice. These relations are by no means identical, but, broadly speaking, they have this in common, that those branches of internal administration which might be affected by decisions reached at International Labour Conferences are the concern of the Rulers of the States and are not controlled by the Paramount Power. The legislature of British India, moreover, cannot legislate for the States nor can any matter relating to the affairs of a State form the subject of a question or motion in the Indian Legislature.

3. That being the position, it is clear that the Government of India cannot undertake the obligation to make effective in the Indian States the provisions of a draft Convention, and it follows, therefore, that a draft Convention can be ratified by India only in the sense that the obligations are accepted as applying to British India.

4. No other conclusion is possible. If the consequences of ratification were to apply to the whole of India it would be necessary under the procedure laid down in Article 405 of Treaty of Versailles that in the case of each of the Indian States all draft Conventions should be brought before "the authority within whose competence the matter lies for the enactment of legislation or other action." And if this cumbrous procedure could be carried out the failure of a single state to agree to make effective the provisions of the Convention would presumably prevent ratification. Further, even if these difficulties could be overcome, it would be necessary in order to comply with the provisions of Article 408 of the Treaty to obtain from each of these several hundred States an annual report on the measure taken to give effect to the provisions of the Convention.

This brief description of the practical difficulties which in my view are insurmountable, will make it clear that if obligations arising out of a Draft Convention are not limited to British India the only course open to the Government of India would be to refuse consistently to ratify all draft Conventions—a course which they would be most reluctant to adopt, as they have in the past, in their progressive programme of social legislation, derived so much inspiration from the work of the International Labour Organisation and have given so many tangible proofs of their sympathy with its objects.

But, although unable to assume obligations in regard to the Indian States, the Government of India will (on the analogy of the ninth paragraph of

Article 405 of the Treaty of Versailles) when a draft Convention has been ratified by India, bring it to the notice of those States to which its provisions appear to be relevant, and will also be prepared, when necessary, to use their good offices with the authority of such States to induce them to apply so far as possible the provisions of the Convention within their territories.

5. On the understanding stated in paragraph 3 above that the obligations assumed apply to British India only, I have now the honour to communicate the "ratification" of India of the draft Convention concerning Workmen's Compensation for Occupational Diseases, and of the draft Convention concerning Equality of Treatment for national and foreign workers as regards Workmen's Compensation for Accidents, adopted by the International Labour Conference at its Seventh Session (1925).

6. The statement of the position contained in the first four paragraphs of this letter is communicated to you only for your information and to enable you to answer any enquiries that may be addressed to you. I would ask you to be good enough, when forwarding a copy of this letter to the Director of the International Labour Office, to request that it may be given the fullest publicity."

This letter is important in two ways. It is an acceptance before the League of the legal incompetence of the British Government to undertake international obligations affecting the internal administration of the States. As a corollary, it follows that the internal

independence of the Indian States is a fact known in Inter-national Law and recognised by other States. In fact the more closely the position is examined the more clear it would become that Indian States remain international persons but capable of exercising that status only through the medium of the protecting power. In this connection I may quote here the opinions of two most distinguished international jurists—Dr. Viktor Bruns, Professor of Law at the University of Berlin and Dr. Carl Bilfinger, Professor of Law at the University of Halle. These two distinguished authorities, after studying the position of the Indian States, come to the following conclusion:—

"The Paramount Power of the British Crown is not incompatible with the independent status of the Indian States as international persons. 'Paramount Power' means that the British Crown has the sole right of acting for the Indian States as towards third States, i.e., has the right to determine whether treaties shall be concluded on behalf of the Indian States and the nature of such treaties. As little as a person under tutelage and therefore incapable of undertaking a legally relevant act, ceases for this reason to be a legal person, so little is this the case, according to international law, with States which are under the tutelage of another State. Such States can neither acquire rights nor exercise them by their own action, but they are and remain the possessors of the rights acquired on their behalf by the Paramount State.

States which are under the paramountcy of another State remain independent international persons so long

as they are not incorporated in the other State. It is the act of incorporation which is followed by the loss of independent personality. We must not allow this situation to be obscured by the circumstance that in consequence of a treaty between the Paramount State and the protected State the right of self-determination of the latter in its intercourse with third States has been partly or wholly taken away. Experience shows that the component members of a federal State, which are not independent persons under international law, frequently enjoy a much greater autonomy according to the constitutional law of the federal State than States dependent under international law on another State which have retained their independent personality.

Even unequal treaties which concede to one State important rights of Paramountcy over another remain, in spite of their content, treaties under international law."

The Indian States in virtue of the delegation of their external independence and the right of self-defence have no international life. War, diplomacy and foreign relations are therefore outside their cognisance. It is the right of the Paramount Power to take decisions on all these questions. As allies of the British Government, they are no doubt entitled to be consulted but the right of decision rests exclusively with the Crown. In matters which naturally flow out of these subjects, such as emigration to foreign countries, passports, navigation regulations, offensive and defensive alliances, international air navigation, strategic communications, etc., the right of decision on the part of

Indian States should be taken as having been surrendered with the surrender of international life. Whether these rights entitle the Paramount Power to create new obligations is altogether different. For example, the right of defence has been surrendered by the States to the Crown. The Crown can therefore naturally demand that the States should not by their activities render the fulfilment of the obligation it has undertaken impossible and that all legitimate facilities should be given to the protecting power. But clearly the Crown cannot ask for fresh sacrifices or impose fresh conditions as a price of the duty it has solemnly undertaken. In the matter of international agreements, it can bind the States so far as it binds itself, and can create only those obligations which the Crown itself undertakes on behalf of British India. Only in matters which involve legislation *by the States* (e.g., suppression of forced labour) the previous consent of the States is necessary.

Defence, foreign relations and international agreements fall within the exclusive authority of the Crown and are not therefore within the sphere of inter-statal law. These are alluded to here only to point out the limitations on the independence of the States.

The main subjects forming the basis of the law affecting the independence of States can be discussed under the headings of intervention, succession and minority administration.

Intervention is the right of one State to interpose its authority in the internal affairs of another independent State. International law recognises this right of intervention in the following cases:—

The Covenant of the League of Nations reserves the right to intervene in the internal affairs of a State in case of war or a threat of war affecting the members of the League. This, however, may be considered to be an exceptional power derived from a delegation of sovereignty. But besides this right given to the collective organisation of nations, sovereign States have always claimed the right to intervene in the affairs of each other on numerous grounds, the chief of which are—

(1) misgovernment in a neighbouring State threatening the tranquility of the intervening State. The successive interventions of the United States in the affairs of Mexico and other central American States, and the intervention of the Powers in China provide examples of this.

(2) Refusal of one State to fulfil its obligations to another may lead to intervention. Where a State is either unwilling or unable to meet its financial obligations, the State affected can intervene and secure the fulfilment of the obligation owing to it. The intervention in Egypt as a result of Ismail Pasha's inability to meet his foreign creditors is an example of this. The joint intervention of France, England and Spain in Mexico under the leadership of Napolean III is another example. The persistent demand for intervention in Russia is on the ground that

the Russian Government has repudiated its obligations.

(3) Persecution or ill-treatment of the subjects of one State by another. The inability of a State to afford protection to foreign subjects is considered sufficient reason for such intervention. The murder of missionaries in China led to the German intervention in that State. The alleged ill-treatment of an Italian Engineer in Afghanistan led to a threat of intervention by Mussolini. The landing of Italian troops in Corfu was the outcome of a similar trouble in Greece. The classic example of how far a State will go to intervene in the affairs of another in its duty of protecting its own subjects is provided by the case of Don Pacificus, a British subject who came to grief in a street affray in Athens. On this occasion Lord Palmerston ordered a pacific blockade of the coasts of Greece and justified his action by declaring that every British subject wherever he is should have the feeling that the might of the British Empire is behind him. One of the reasons advanced by the British Government for its intervention in the affairs of the South African Republics was the ill-treatment of Indians by the Boers.

In all these cases intervention is recognised to be legitimate. At the same time it is well to remember the principle laid down in a circular issued by the Russian Government when England suspended diplomatic relations with Naples and threatened intervention on the ground of general misgovernment. "We could understand," said the Imperial Russian Government, "that as a consequence of friendly forethought one government should give advice to another in a benevolent spirit, that such advice might even assume the character of an exhortation: but we believe that to be the furthest limit allowable. Less than ever can it now be allowed to forget in Europe that Sovereigns are equal among themselves, that it is not the extent of territory but the sacred character of the rights of each which regulate the relations that exist between them. To endeavour to obtain from the King of Naples concessions concerning the internal government of the State by threats or by a menacing demonstration is a violent usurpation of his authority, an attempt to govern in his stead; it is declaration of the rights of the strong over the weak.[4]

These principles are applicable also to Indian States, but beyond these there are certain features, special to the Indian State-system, which govern the law relating to intervention. It is recognised that since the Crown has the obligation to protect the dynasty against internal rebellion, and to defend the State against external aggression, there is a co-relative duty

4 Martin, Life of the Prince Consort, III. 510. On the question of Intervention, see:—

(i) Hodges Doctrine of Intervention (1915).

(ii) E. C. Sewell—Intervention in International Law.

on the part of the Rulers to govern in such a manner as not to raise active and widespread discontent in the State. The Paramount Power therefore has the right to intervene in the affairs of a State if gross misgovernment prevails in that State.

Some writers have put forward the claim that the Government of India has the right of intervention even if there is no misgovernment in the State. The Report of the Indian States Committee adopts this point of view and declares as follows:—

> "Intervention may take place for the benefit of the Prince, of the State and of India as a whole."[5]

The Committee also held that even when there was no misgovernment, the Paramount Power will be entitled to intervene in case of popular agitation for a change of Government.[6] These statements do not seem to be justified either by principles of law or by the just rights of paramountcy. The Government of India have on two important occasions officially laid down the principles governing their right to intervene in the internal affairs of States. In the *Baroda case,* the Government of India declared:

> "If these obligations (of sovereignty) be not fulfilled, if gross misgovernment be permitted, if substantial justice be not done to the subjects of the Baroda State, if life and property be not protected or if the general

5 Butler Report, para 51.

6 Para 50.

> welfare of the country and people be persistently neglected, the British Government will assuredly intervene in the manner which in its judgment may be best calculated to remove these evils and to secure good government."

More recently Lord Reading in his letter dated the 27th March 1926 to the Nizam of Hyderabad declared—"the internal no less than the external security which the Ruling Princes enjoy is due ultimately to the protecting power of the British Government, and where Imperial interests are concerned or the general welfare of the people of a State is seriously and grievously affected by the action of its government, it is with the Paramount Power that the ultimate responsibility of taking remedial action, if necessary, must lie."

These two pronouncements taken together yield the conditions under which the Paramount Power claims the right to intervene. They are:—

(1) disregard of the obligations of sovereignty;
(2) gross misgovernment;
(3) refusal to do substantial justice;
(4) non-protection of life and property;
(5) persistent neglect of the general welfare of the country;
(6) Imperial interests.

The first five of these constitute a comprehensive definition of systematic misgovernment. Individually

or in combination they constitute a menace to the internal tranquility or external security of the State, and the Government of India claim with justice that they have the right to interpose their authority in the interests of the Empire no less than of the State and the Prince. The leading cases of intervention are all connected with one or other of these enumerated conditions. Since 1920 there have been 6 important cases of intervention the facts of which have come to the knowledge of the public. They relate to the abdication of the Maharaja of Nabha (1922), the limitation of powers of the late Maharana of Udaipur, the abdication of H. H. Tukoji Rao Holkar of Indore (1925), intervention in the affairs of His Exalted Highness the Nizam (1926), the abdication of the late Maharaja of Bharatpur and the curtailment of the powers of the Maharaja of Alwar. A detailed discussion of these cases is not possible at the present time, because in the case of Udaipur, Hyderabad and Alwar all the material facts have not been made available to the public. In the Nabha case the Paramount Power made it clear in the Resolution issued on the subject that their intervention was due to

(a) the alleged interference of the Ruler of Nabha in the affairs of a neighbouring State;

(b) gross and systematic misuse of the judicial machinery of the State with the active connivance of the Ruler.

The Indore case stands by itself. The intervention of the Paramount Power was based on principles not unknown in International law. A sensational crime

was committed in one of the important thoroughfares of Bombay by men connected with Indore administration. A demand was made by the Government of India that an enquiry should be conducted into the whole case about the personal responsibility of the Ruler. The Maharaja considering such an enquiry to be against his status and position abdicated. The demand which the Government of India made is one which is recognised as legitimate in international law. Austria demanded such an enquiry after the Serajevo murder. More recently France asked for such an enquiry in Hungary when the conspiracy to counterfeit franc notes was discovered. If one independent State is suspected of complicity in events leading to breach of peace in another, it is within the competence of the latter State to insist on enquiry and on refusal to intervene forcibly. So far as the claim made by the Paramount Power to adjudicate on the personal responsibility of the Ruler of Indore was concerned, it is well to remember that the same demand was made by the Peace Conference at Versailles in regard to Emperor William II and that demand was not considered by the legists of the allied powers to be against the canons of international law. Therefore the *Indore case* is not properly speaking an intervention based on the special obligations of Indian State law.

The Bharatpur case is more important from the point of view of the student of Indian political law. The only allegation against the administration of Bharatpur was financial paralysis amounting to gross misgovernment. There was however no case of failure

to meet external obligations. The question was solely the effects of the extravagance of the Ruler on the administration. Whether this is a matter on which the Government is entitled to intervene must depend on the fact whether these effects amounted to "gross misgovernment". Mere financial extravagance cannot justify intervention in the affairs of a State. Whether such extravagance led in this particular case to a paralysis in the administration amounting to gross misgovernment is a question of fact on which it is impossible for outsiders to give any opinion.

In the Hyderabad letter of Lord Reading, already quoted, the right of intervention is claimed on the basis of *imperial interests*. If by this phrase it is meant that the Paramount Power has the right to intervene in order to secure the fulfilment of Imperial obligations it has undertaken, e.g., the defence of India including the States, the right to protect foreign lives and foreign property, in short, the rights arising from the surrendered powers, then the claim is just and irrefutable. But 'Imperial interests' is a wide and vague phrase capable of the most extended application. It does not seem that the Paramount Power has any right to intervene in the affairs of States merely because the economic interests of the Empire would benefit by such intervention.

A peculiar feature of Indian State law is that there are rights of intervention in the internal affairs of many States which arise out of the express provisions of their treaties. Thus a clause in the Treaty with Travancore provides that the Maharaja will abide by

the advice of the Resident on important questions. Provisions of a similar character are found in treaties with numerous important States. How far this provision is in force is dependent on the usage in that particular State. Intervention in such cases is a part of the constitutional machinery of the State and cannot properly be included within the sphere of interstatal law.

The law relating to succession has undergone considerable change during the last few years. The previous rule was that no succession in an Indian State is valid unless it be with the previous sanction of the Paramount Power. This was clearly an usurpation of rights in the case of direct succession, because in such a case the right to succeed did not depend on the sanction of the Paramount Power. This point was conceded during the discussion with the Princes in 1917 and in the "Memorandum on the Ceremonies connected with successions" it was laid down that where there is a natural heir in the direct line, he succeeds as a matter of course and the recognition of such succession is to be conveyed by an exchange of *kharitas*. The durbar of succession is to be held by the Ruling Prince himself and not by the Resident or the Agent to the Governor-General as used to be the custom in many States. The religious ceremonies which constitute the traditional enthronement will be conducted without the intervention of the Paramount Power and the public assumption of authority will be by the Ruler himself.

It is of course obvious that in cases of disputed succession, the right of decision must remain with the

Paramount Power; that is a limitation on the independence of the State resulting from the duty of the Paramount Power to prevent civil war and to ensure the peace of the State and the permanence of the dynasty.

The special responsibilities of the Paramount Power during the minority of Rulers is another aspect of the law affecting the independence of States. The position which the Government of India had taken up before 1917 was that during the minority of a Ruler the duty of administration fell on the Government of India. Lee Warner held the view that the duty of assuming the guardianship of minor Princes flowed from the sovereign right of the Crown of England. This is a survival of the feudal theory under which it was the duty and right of the suzerain towards his vassal to assume the guardianship of the minor and manage his fief for him. But the Indian States never recognised this right on the part of the Paramount Power and it was strenuously denied by them that during the minority of the Ruler the right of administration remained with the British Crown. The practice which the Government of India had followed in some States of appointing their own officials as Regents and administrators had led to numerous complaints. From the time of Lord Mayo a Minority Administration was looked upon as a welcome means for introducing British methods of administration and of bringing the State in line with British Indian policy. Thus in Bikaner and Alwar, the British officials who were entrusted by the Government of India with the administrations of those States

surrendered the right of coinage. Numerous other cases could be quoted to show that the practice of entrusting administrations of States to British officials working under the orders of the Government of India was liable to great abuse.

As a result of the continued protests of the States a compromise was reached and the Government of India issued a Resolution laying down the principles of Minority administration. This Resolution is a good example of the conventional law as it is now developing in India.

LECTURE III.

THE LAW RELATING TO PROPERTY.

The Inter-statal Law relating to property touches intimately the sovereign rights of the States.

The most important property of a State is its territory, hence any practice, usage or law which affects the absolute right of the State over its territory is a limitation of its authority. The establishment of Cantonments, Residency areas, easements enjoyed by one State in the territory of another, guarantees to feudatories and estate holders, machinery for the settlement of boundary disputes, etc., are matters directly affecting the property of a State.

Cantonments in Indian States are areas occupied in the territory of an Indian Ruler for military purposes. They are enclaves within the State territory. Secunderabad, Bangalore, Mhow and Neemuch are suitable examples. Originally it was recognised that the British Government possessed no sovereign authority in these areas. No inherent right of jurisdiction was claimed. In 1880 Col. Maisey, Examiner in Military Law, brought up this question for the consideration of Government. He wrote: "I have as yet found no explicit information as to whether the land of Cantonments situated in Native States belongs absolutely to the British Government or whether in any case it still belongs to the Native Ruler and is held by Government under a grant or lease by him." In the

letter of the Legislative Department No. 561, dated the 27th July 1874 an opinion was expressed that the sites of any such Cantonments situated in Native States belong to the British Government even if not transferred under treaty." It was declared they must be held to have been ceded to Her Majesty's Government. This easy solution met with strenuous opposition from some important States and the matter was allowed to lie over without any definite decision. But in the period between 1891 and 1896, a definite policy was adopted of treating the sites as British so long as the area was under military occupation. In 1891 the Government prohibited the States from exercising jurisdiction and from taxing the population within the area. The present position is that the Government claim "no proprietory right over the soil but that so long as the cantonment is maintained the land assigned to the cantonment should be under their control as absolutely and completely as if it were part of British territory."

The position of the Cantonments within State territories has to be looked at from the point of view of jurisdiction, fiscal policy and of the general control over civil population.

Originally the jurisdiction in these areas belonged to the States. In 1853 the Government of India recognised the sovereignty of Gwalior over all Cantonments situated within the State and declared that they had no right

(a) to set up Criminal Courts and try persons committing offences within those areas; or

(b) to legislate for those areas.

As a result, His Highness the Maharaja Scindia issued a Sanad creating special Courts for those areas. He also promulgated certain laws which were in force in British India, as specially applicable to those Cantonments. In the period between 1892 to 1896 when the Government of India began to claim sovereign rights over these Cantonments, they extended various British laws without consulting the Maharaja or securing his consent. In 1897 an order was issued by the British Government, extending the area under British jurisdiction to five miles. Even the Court which was created by the Maharaja was abolished without reference to him.

A Cutch case will better illustrate the point. Land was sanctioned by the Darbar at Bhuj for the construction of British police lines. But in according the sanction the Maharao's Government stated "However to make the matter more clear, it may be added that the use of the land which has been granted for the purposes of the police lines only, shall not be availed of for any other purpose and in the event of the site not being required for the stated purpose, it shall revert to the Darbar. In fact owing to the use of the land having been allowed for the object stated, it does not cease to be the property of the Darbar." In spite of this express reservation, a demand was made in 1917 for the formal cession of jurisdiction within the area.

The Cantonment question has another aspect, that of excise and other fiscal and commercial arrangements

affecting the revenues of the States. It is generally held by the Government of India that Cantonments and other areas of that nature within the territory of a Ruler should not be subject to excise rules and customs duties of the State. The subject should be looked at from two points of view: of the military quartered in the Cantonment and of the civil population. The former have a clear claim for exemption from the State customs duty. But the same claim was at one time advanced with regard to the civil population also. In Cutch, attempts were made to secure this exemption to the ordinary residents of the Cantonment and till 1909, in the Gwalior Cantonments also the same policy was followed.

In 1909 a conference was held at Indore on September 21st-23rd to discuss the questions arising from the taxation by Gwalior of the goods supplied to British Cantonments situated within the territories of the Maharaja Scindia. The Gwalior claim was that the Cantonments, though temporarily under British occupation and under British jurisdiction, are integral parts of the Darbar's territories and that the Darbar are entitled to subject their inhabitants (other than classes who by treaty or otherwise are exempt from the taxation of the Darbar) to their customs duties. The Gwalior Government held that the supplies of the unexempted portion of the Cantonment population should be taxed in precisely the same manner as the supplies of the Darbar territory.

It is interesting to note that when this conference was called the Officer Commanding at Goona

(Col. W. A. Watson) challenged the right of the Darbar to effect a change, contending firstly that Goona is British territory and secondly that its inhabitants are entitled to exemption by presumption. The conference including the Political Officers however held that the States are, except where treaties expressly prohibit it, entitled to impose customs duties on the non-exempted population of the Cantonments.

A second conference was held at Indore on the 5th August 1910, when the details were agreed to. The matter was however again reopened by Mr. (afterwards Sir) Michael O'Dwyer who asked for certain changes before fixing the date for the introduction of the scheme. It was suggested that if, by the loss of Octroi revenue, the Cantonment fund should cease to be self-supporting, the Darbar should compensate the Cantonment authorities. This principle is followed in the Cantonments situated in the Nizam's territories.

The settled policy of the Government of India now is "so far as possible to restrain the growth of Cantonments in native territory into trading centres" and to utilise the area solely for the purpose for which it was originally leased.

"Residency areas" constitute another interference in the property rights of the State. Residency proper is naturally regarded as possessing an ex-territorial character. This is in accordance with international practice. In Central and South America the exterritoriality of the residence of ministers is so absolute that political refugees belonging to the country are allowed

to take shelter within the embassies of other powers.[1] The immunity of Residencies is undoubted and the political law of India attaches great importance to it. But the extension of exterritoriality to areas not within the occupation of the Resident is undoubtedly an encroachment upon State territory and an usurpation of the State's rights. The Hyderabad Residency area extends to many square miles. In Kashmir there was until recently an area in the city of Srinagar itself over which the Resident, it would seem, claimed certain rights as a matter of courtesy. The best known of the Residency area cases is that of Indore, a detailed study of which would be of considerable interest.

By the Treaty of Mandsaur (1818, Article 14) it was provided that "in order to maintain and improve the relations of amity and peace hereby established, it is agreed that an accredited minister shall reside with the Maharajah Malhar Rao Holkar." For his residence an area of over 400 acres was assigned. Though the area still belongs to the State and is assigned only for a *specific* purpose, it has been converted into a small town. A big centre of trade has come into existence over which the State's authority is not recognised. Besides by a system of slow encroachment the original assignment has itself assumed much larger dimensions. Originally only 400 acres were given; the area now known as the Residency Bazar extends to 800 acres. It now contains 3602 houses and has a population of over 13,000 inhabitants. The right of the Holkar's Government to tax the inhabitants of the Residency Bazar is not denied,

1 Hall, p. 234.

though its exercise has been strongly resented and many unjust limitations have been set on it. In fact Col. Barr as A. G. G. stated in 1897 as follows:—

> "Under certain limitations and subject to certain provisions as to method of control, the Agent to the Governor-General is prepared to admit that as the Residency limits form an integral part of the territory of His Highness the Maharaja Holkar, the Darbar has the right to levy from a person living in the Residency limits, not being a British subject, the same taxes as are taken from other persons living in other parts of Indore territory. It may be conceded that Banias and other dealers purchase and bring into the Residency Bazar grain and other articles of commerce in excess of local requirements and that these articles change hand in the Residency Bazar and that profits accrue to the dealers who buy and sell these articles.
>
> It is with regard to the legitimate tax on these trade transactions that the Agent to the Governor-General is prepared to admit the claim of the Indore Darbar".

It is clear from the Indore case that where exterritoriality exists, there has been a tendency to extend it beyond its legitimate scope. But with the assertion by the States of their rights the practice has come to be governed by certain principles which may be stated below—

(1) Whether such areas are Cantonments or merely the Bazars attached to the Resi-

dency, the Sovereignty and proprietory rights belong to the State;

(2) Jurisdiction over this area is exercised by the British Officer as a "political" right;

(3) The right to tax the non-exempted classes in these areas belongs to the State and not to the British Government.

It is necessary to add to here that the Residency Bazar has now been retroceded to Indore; that negotiations are in progress with the Hyderabad and Mysore Governments for the retrocession of the Civil areas attached to the Cantonments at Secunderabad and Bangalore. The Government of India have now recognised the justice of the claim of the States that the area under military occupation should be strictly limited and the rights of the State over adjacent tracts where bazars and cities grow up should not be encroached upon by the Cantonments and Residencies. This rectification of policy has had very beneficial results.

The law with regard to this subject has not yet assumed its final shape. There are numerous points such as the extradition of State subjects from these areas, the validity of special State Laws, the exercise of jurisdiction by Political Officers, the right to extend telephones and State postal service, the use of State currency as legal tender etc. on which no final agreement has yet been reached. Till these questions are settled by mutual agreement, the practice relating to Cantonments and Residency areas must remain unsatisfactory.

The boundaries of a State are fixed and unalterable except in the cases discussed in the 2nd lecture. Where the boundary is artificial, that is where it results from an arbitrary division of land, it is determined by agreement. Where it follows a natural course, there are certain broad principles, generally applicable to all States. According to Hall, "Where a boundary follows mountains or hills, the water-divide constitutes the frontier: where it follows a river, and it is not proved that either of the riparian States possesses a good title to the whole bed, their territories are separated by a line running down the middle, except where the river is navigable in which case the centre of the deepest channel or as it is usually called the Thalweg is taken as the boundary"

Though the boundaries between Indian States are fixed, there often arise controversies and disputes between States on this subject. The Government of India as Paramount Power claims, by virtue of its duty to prevent private war, the right to decide finally these disputes. In the case of a boundary dispute between an Indian State and a foreign power the right belongs undoubtedly to the British Government. This claim was asserted by the Government in the boundary dispute between Kashmir and Tibet. An attempt to settle the question by direct negotiations having failed, the Government of India claimed that in virtue of its paramountcy it had the power to arbitrate between Tibet and Kashmir.

As between Indian States themselves a conventional law is now in the process of development and the

Government of India are discussing with the States the desirability of issuing a Resolution on the question. The absence of clearly defined rules on this subject was keenly felt by the Princes and the negotiations which have been going on between the States and the Government have not yet reached the final stage.

The easements enjoyed by one State in the territory of another is another important question affecting property. These easements may be divided under the following heads:—

(1) privileges in temples, mosques and other religious property;

(2) vested rights in regard to water, right of navigation and passage, rights of irrigation;

(3) air navigation.

In a country like India where religion plays so important a part, it is but natural that there should be numerous cases of religious rights interfering with the territorial sovereignty of States. Sometimes there are well established rights belonging to a State in the temples situated in the property of another e.g., the rights of Travancore in the *Kutal Manikyam* and Perumana Devasthanams situated in the State of Cochin and the rights of the Gwalior Darbar in certain temples in Kolhapur. In other cases there are famous pilgrimage centres, sacred spots situated within the territories of Indian States over which by long usage the communities holding such spots as sacred have acquired special rights such as the right of unhindered

passage, the right of worship, the right of the community to see that their religious susceptibilities are not outraged. Outstanding examples of this class of cases are the Dwarka Temple in Baroda, the Amarnath Cave Temple in Kashmir, the Sikh Temple of Nander in Hyderabad territory, the Sacred Hill of the Jains in Palitana State.

It is undeniable that when a place has been held sacred for a long time by a religious community not confined to the State in which that place is situated, there is created by usage a limitation in the authority of the State. The State cannot prevent access to it of outsiders coming for legitimate purposes of worship, nor mete out differential treatment to them. It cannot demolish the temple, mosque or shrine or do anything likely to outrage the religious scruples of those who hold it sacred. This is a well established principle even in international law. For many centuries the sacred places of Christianity were under Turkish domination, but the right of the Turks to deal in whatever manner they chose with the places of Christian worship and veneration in Jerusalem or Nazareth was never accepted by Christian nations or asserted by the Turks themselves. The treatment of the Pope by Italy was always considered an international question and rightly so.

In India, the leading cases on this question relate to Palitana Hill and to Nander. The Jain community holds in special reverence the shrines and temples on the sacred Hill situated in Palitana. The Thakore Sahib of Palitana thought it a legitimate method of raising revenue to impose a heavy pilgrim tax. This

was resented by the Jains who appealed to the British Government and a conference was held between the interested parties under the mediation of a British Official to settle the question.

The Nander case is even more interesting. The Sikh community holds Nander in special veneration as Guru Sri Govind Singh Sahib died in that place. The Gurudwara built on the site is the object of devout pilgrimage by Sikhs all over India. The town is within the dominions of the Nizam of Hyderabad. Communal trouble broke out at Nander between the Sikhs and the local Muslims and it was alleged that the Nander temple was attacked by Mohammedans. The Sikh community was naturally agitated and the Sheromani Gurudwara Prabandhak Committee decided to send *Jathas* to Nander to vindicate the honour of the *panth.* The Nizam's Government however handled the situation tactfully and invited the co-operation of Sikh leaders. A British judicial officer from outside was appointed to decide the case.

It is clear from these examples that the territorial sovereignty of a State suffers from some serious limitations in regard to religious centres over which communities outside the State have acquired rights of worship or pilgrimage, or which are held in special veneration by them.

Another kind of easement arises in regard to vested rights in water, right to navigation and passage and right to irrigation. International law relating to these subjects is very complicated and not well defined. It is

generally agreed that a State has full sovereign right over waters contained in lakes, rivers or channels existing in or flowing exclusively through its territory. Even with regard to these, prescription may give another State a right. Thus certain villages in Sialkot district have water rights in certain villages in Jamnu. Apart from this qualification arising from prescription, it is generally accepted that lakes, rivers, etc., which are exclusively within the territory of one State belong to it. The numerous lakes in Kashmir, the Pampa and certain other rivers in Travancore fall within this category.

The question of the general right of navigation about which many international controversies once raged, especially in relation to the Scheldt, Mississippi and St. Lawrence has no bearing on Indian conditions. So far as international law is concerned, the riparian law has been almost exclusively in relation to navigation. Even in this sphere the law relating to most of the river systems is decided by international agreements. The Berlin Conference provided for the free navigation of the Congo and the Niger systems. The treaty of Paris opened the Danube to all nations and instituted a permanent Danube Commission. The Elbe, the Oder and the Niemen have been declared international rivers. So far as the navigation of the Rhine was concerned, its regulation was considered an important part of modern international law. The Indian rivers, so far as they are navigable, are exclusively in British territory. The Indian States, being mainly inland areas, have no rivers open to navigation.

International law, so far as irrigation rights are concerned, is yet undeveloped. The only river outside India, where the question has arisen, is the Nile, and the allotment of water between Abbyssinia, the Soudan and Egypt has not yet been decided according to any principles. An attempt was made to place the international law on this question on a firmer footing at the Madrid Conference in 1911 but the draft regulation dealt mainly with the question of utilising water for power. The problem in India is that the Indian States have generally speaking no rivers within their exclusive authority. In every case British India is a co-riparian owner. So the rights of irrigation in almost every case (except in Travancore) are shared between British India and the State concerned.

There has been no definite ruling on the irrigation rights of Indian States.

Proposals have been put forward at different times to codify the law in India but the complicated conditions of the Indian river systems have so far defied codification. So far as municipal law is concerned the tendency has been to abrogate the so called rights of riparian owners. The preamble of the Northern India Canal and Drainage Act expressly asserts this by declaring that the Government is entitled to use and control for public purposes the water of all rivers"..... In Canada and Australia also the same tendency has found statutory recognition. The existence of Indian States complicates the problem of absolute ownership which the Government claims

over the water in its territory and the riparian controversies in India have arisen out of this fact.

The main river controversies in India relate to the Periyar irrigation scheme, the Sutlej irrigation scheme, the Cauvery dispute and the disputes between the Jammu and Kashmir State and the Punjab.

The Periyar is a river originating in Travancore but it touches Cochin territory in many places and the British territory of Cochin at its mouth. Periyar is therefore undeniably an interstatal river, in fact the only one in Travancore. The Madras Government desired to utilise the waters of this river to irrigate the adjacent British district and this could be done only by having the headworks of the project in Travancore territory itself. An agreement was forced on Travancore by which an area of 134 square miles was surrendered by the State for the creation of dam on a nominal rental of Rs. 5 per acre. The Periyar case does not yield any principles relating to water rights and is of importance only as an instance of high-handed economic injustice.

The Bahawalpur cases are more important from the point of view of water rights. Bhawalpur is a State of 15,918 square miles of which 9881 square miles are desert land. But for the Sutlej the entire State would be a desert. The area bordering on the river is cultivated by irrigation. Naturally any decrease in the water of the Sutlej is a matter of life and death for Bahawalpur. Therefore when proposals for the construction of the Lower Bari Doab Canal were before the Government of India, the Bahawalpur Darbar entered

a vigorous protest against any attempt to disregard its rights, the material portion of which reads as follows:—

"When the State is deprived of water, and the contiguous parts of Montgomery and Multan districts will receive a constant supply, the population of the five said Kardaris numbering 519,625 persons will feel the loss most painfully. Many villages shall be desolated by their inhabitants migrating to Multan and Montgomery. The Sutlej has ever contributed most greatly to the prosperity of the State and it has lent an importance to the towns (like Bahawalpur, Ahmadpur, Khairpur, Uch, etc.) which are situated on its banks. The project threatens to lower the status of these towns. Observing such an all-round loss, the State, with perfect confidence in the protection that has ever been accorded to its interests by the Government, begs to represent its dangers and to request that a full consideration be given to the matter before the project is finally sanctioned.

"It is not the first occasion on which the proposal for building a weir across the Sutlej has been made. The proposal is an old one and dates far back to 1856 when the idea was first suggested. In 1869, and later, levels and surveys were taken of the area likely to be affected. At that time Colonel Minchin, then Political Agent of the State, had, in his letter to the Government No. 32 of 22nd July, 1869, represented the interests of the State. The Chief Engineer to the Punjab Government in his letter No. 3788, dated 19th October, 1869, proposed to allot a certain amount of water for the State. It shows that the rights of the State were

considered. But the project, if it was dreaded as a blow then, would prove a death blow now, demolishing, as it will, the results of years of constant efforts and expenses incurred.

"It is a fact, supported by history as well as by custom, that territories through or alongside of which a certain river flows have a right to the use of water to the extent that the exercise of this right by one of them may not infringe upon that of the others. This territory receives its supply of water from the lower part of the Sutlej course, and is justified in claiming a due consideration to its interests. Such being the state of things to result from the completion of the project, it is incumbent that the Government should be humbly requested to arrive at a conclusion that should not only be not prejudicial to the welfare of the State but should also allow to it room for future progress, thus enabling it to give proof of its everlasting gratitude by its constant faithfulness and prompt services."

The justice of this claim was recognised by the Government and the question was happily settled.

Bahawalpur rights came again into prominance with the Sukkur Barrage Scheme. This time Bahawalpur claimed as an upper riparian state that the irrigation proposals of Sindh should take into consideration the future needs of Bahawalpur. This point of view was also recognised and Bahawalpur was invited to share in the benefits of that scheme.

The Kauvery case is equally interesting.

In 1892, the Government of Mysore agreed not to construct any further storage works on the Kauvery river without the previous consent of the Madras Government, who were entitled to refuse that consent only if the work proposed endangered the prescriptive rights of the existing irrigation in the Delta. In 1910 the Mysore Government asked for permission to construct a dam at Kannambadi which the Madras Government promptly refused. An arbitration was resorted to but its award was not accepted by one of the parties. Finally on appeal the Government of India decided that the water should be allotted on a principle which would leave the parties free to irrigate a specified acreage without the consent of the other party. The decision here was clearly on the basis of equity and not of rights and the principle which the Mysore case yields is one that has considerable value in all discussions of this question.

The Kashmir irrigation cases stand on a slightly different footing. The chief water sources of the Punjab either originate in or flow through the Jammu and Kashmir State. But the State itself being mainly hilly cannot, except in a very small area near the town of Jammu, be irrigated by the ordinary level irrigation. But at the same time hilly area south of Pir Punjal could only be brought under effective cultivation by irrigation and as it is possible that new methods of lift irrigation may be devised in the future, the State claims that no new vested interests should be created in the Punjab without making adequate provision for its own

demands in the future. The claim of Kashmir is based on two facts. During the last 40 years Punjab has been extensively irrigated by waters in which the State had definite rights. But those rights were not taken into consideration and whenever irrigation proposals even of a minor character are now put forward by the State, the prescriptive rights and vested interests of the Punjab are pleaded. But the possibility of future developments cannot be overlooked and Kashmir claims that new irrigation projects of the Punjab should be undertaken only after due consideration has been paid to its needs, present and future.

The Government of India, it should be stated here, have however claimed that they are the trustees of the water rights of the river systems of India and as such have the right of allotting water to non-riparian States also, if they (the Government) are convinced that the material interests of the riparian States would not suffer and the non-riparian States would be greatly benefited. It was on the basis of this claim that the Government of India set aside the objections of Bahawalpur and allowed Bikaner to share in the Sutlej irrigation scheme. On the same principle when the Sirhind Canal was constructed, water was allotted to several non-riparian States like Patiala, Nabha and Jind. The principle which the Government of India has enunciated in the Bahawalpur case is that the greatest good of the greatest number should be the criterion irrespective of provincial and State boundaries subject to the recognition of the prior rights of riparian owners.

Another important question affecting the territorial rights of the States is the right of air navigation. The sovereignty of subjacent States over the air above them is now recognised in international law, though at the beginning of the century when the matter became important, opinion among jurists was divided. Bhintchell, Pradier Fodere Nys and others held that air is absolutely free like the sea, except for a limited territorial zone. M. Fauchville in the revue generale de droit international public held that States can have no rights of sovereignty over air space by them because it is by its nature incapable of being appropriated, or occupied or subjected to their mastery such as the notion of mastery implies. He even drew up a code entitled "Regime Juridique des aerostats" of which the 7th article affirmed that "the Air is Free",[2] while the opposite view that the subjacent state has absolute sovereignty was maintained by Spaigul, Bellot and de Montmorency. The Committee on Aviation of the International Law Association[3] reported in 1913 accepting the principle of air sovereignty. The matter was set at rest by the International Air Convention of 1919, which accepted the complete and exclusive sovereignty of every State over the air space above it. Following this the British Government, by an Act of Parliament, affirmed the "full and absolute sovereignty and rightful jurisdiction" of the King over the air spaces above British territory.

Early in the sessions of the Chamber, the Princes raised the question of their sovereignty over

2 See Air Craft in War, p. 61.

3 International Law Notes, 3, 133.

air space and this was accepted in principle by the British Government. But air navigation is a matter of international concern and as such the absolute sovereignty of the States over their air "territory" is subject to certain important limitations which were agreed upon by negotiations with the Standing Committee.

The principles of what may be called the Interstatal Air Convention of India are as follows:—

(1) The sovereignty of the Rulers of Indian States over air space is recognised.

(2) But Service Air Craft will have the right of flying over State territories and landing at any point in war time. In peace time such Craft will land only at places fixed by agreement and will not fly over prohibited areas, except in cases of emergency. The States agree to enact and enforce legislation on the lines of British Indian legislation and also the Rules and Regulations thereunder. Suitable sites would be provided for landing grounds. The States could build them for themselves but subject to the condition that the agency employed for such construction should have adequate technical qualifications.

The fiscal rights of the States will be safeguarded by declaring special landing grounds as Air ports.

> Every State is entitled to have its own civil air craft for the carriage of goods or persons and it may reserve such rights. The Registration of Air Crafts and the licensing of personnel to be undertaken in agreement with the Civil Aviation authorities.

From this summary it will be noticed that the air sovereignty of the States is recognised subject to the limitations of their international relations and to the necessities of defence. So far as internal civil aviation is concerned, each State will have the authority to reserve to its own air craft all passenger or goods traffic within its own territories. In peace time—except in cases of emergency—British as well as foreign air craft will be entitled to land only in places agreed on. So far as the registering of machines and licensing of pilots are concerned, these are regulated by the International Convention and as such the rights of the States are limited. The fiscal rights of the States are fully safeguarded.

The Air Navigation Agreement is a good example of the new procedure in matters affecting Indian States and the Government.

LECTURE IV.

THE LAW RELATING TO JURISDICTION.

The limitations of jurisdiction affecting courts in Indian States are a part of Indian public law as it affects persons. This law can be divided as affecting nationality, extra-territorial jurisdiction claimed and exercised by the Government of India, the exclusion of the jurisdiction of the States in regard to certain class of people by virtue of their official position, the guarantee system in the Central Indian States, the special jurisdiction exercised over Railway lands and the limitations with regard to extradition.

So far as Indian States are concerned, their subjects occupy in international law the status of British protected subjects. No claim is made by the British Government that the subjects of Indian States are their subjects. On the other hand, in passports and other official documents they are described as British protected persons, or subjects of a British protected State. The British Courts recognise the claim that the subjects of Indian States are not British subjects. In the case of *Watts* v. *Watts* the contention of the defendant that as a subject of Travancore, he was not a British subject and therefore the procedure appropriate to foreign subjects resident outside the jurisdiction of the court should be applied to him was upheld by the court in England. In India the Foreign and Political Department issues notifications permitting subjects of Indian States to hold appointments in British India.

Though the subjects of Indian States are not British subjects in the strict sense of the term, there is generally speaking no law defining nationality in the States. Subjects of Indian States are of two classes; either those whose ancestors have settled in the States or those who have accepted permanent domicile in the States.

The question of non-British Foreigners acquiring the status of Indian State subjects and thus becoming entitled to the protection of the British Crown is a matter of some difficulty. The question is what is the extent of protection that a foreign national, say a German or Frenchman, who has become the subject of an Indian Ruler is entitled to receive from the British Crown. An analogous case which throws some light on this subject arose in England in 1918, *R.* v. *Francis, Exparte Markwald* (1918, 1 KB, p. 617). In this case a natural born German subject left Germany and settled down in Australia. He was granted naturalisation under the Commonwealth of Australia naturalisation Act of 1903. A foreigner who naturalises under this act becomes entitled to all political and other rights, powers and privileges to which a natural born British subject is entitled in the commonwealth. In London however he was charged as being an Alien who had failed to comply with the rules under the Aliens Restriction (Consolidation) Order, 1916. Justice Darling held in this case "that a man by virtue of such a certificate of naturalisation as was granted here and of the Oath of Allegiance may become the liege subject of the King in some part of his dominions yet not in all; and wherever

he is not a subject, he is an Alien." In another case relating to the same Markwald (Markwald *v* Administrator General 1920 1 Chancery, Page 348) Lord Sterndale M. R. declared that " the certificate of naturalisation granted to the appellant has therefore only that limited effect and by virtue of that I think he gets no right here at all."

The position therefore would seem to be that a foreign national can be naturalised in an Indian State and he will be entitled to the ordinary protection that a British protected subject gets: but he would still be an Alien in the eyes of British Law and will have no rights except in the State where he is naturalised. A foreigner's son born in the country could, if he elects, be a natural born subject of the State and would have the same status as any other subject of the Ruler.

There are numerous other questions allied to this subject of nationality such as the position of women of foreign nationality married to Indian State subjects, the acquisition of foreign nationality by the subjects of Indian States etc which could not be dealt with here.

It is sufficient to state:—

1. that the subjects of Indian States are not British subjects and therefore in British India they can and sometimes are treated as aliens: for example they can be deported from British India,
2. that ordinarily the rights of the British protected subjects are the same at least

outside India as those of natural born British Indian subjects,

3. that certainly the two are not naturally exclusive, that is to say a man can be a subject of an Indian State as well as a British subject by birth.

British Indians who have accepted permanent domicile in the States become in course of time subjects of States and in the same way the subjects of the States who have settled in British India are freely recognised as British Indians. In fact these two are not mutually exclusive. It is possible for a person to be a British Indian and a State subject at the same time.

The only State I know in which an attempt has been made to define State nationality is Kashmir. No one who has settled in Kashmir after 1886 is considered a hereditary subject of the State and various special rights have been granted to this class of people. People who are not subjects of the State are not entitled to own property, nor except in special cases, can they hold appointments in the State. No other State has differentiated between its own subjects and other Indians, though in numerous States, like Mysore the Governments follow the policy of encouraging their own subjects.

The Law regarding the jurisdiction in Indian States is especially complicated. In the case of all the 109 States which are members of the Chamber in their own right, the jurisdiction over their own subjects belongs exclusively to their governments. Again, in

all cases Europeans and Americans are outside the jurisdiction of the State. It is also the claim of the Government of India that British Indian officials and soldiers and officers of the Indian Army, except when they are on leave, are within the exclusive jurisdiction of the British Government. Railway lines are under a special jurisdiction and in Kashmir, jurisdiction over the Treaty High Road going from Srinagar to Leh is exercised by two joint commissioners, one representing the State and the other the British Government.

The exclusion of State jurisdiction over Europeans and Americans is a reflection of the system of capitulations once universally prevalent in Asia. Till 1861 however, the States enjoyed the right of trying Europeans and no claim had been made on the ground of lack of jurisdiction. The systematisation that followed the Mutiny brought this question to the forefront. In 1861 the Nizam issued a proclamation in which he stated "whereas many Europeans, foreigners and others, descendants of Europeans and born in India are resident in the territory of His Highness the Nizam and as disturbances arise amongst themselves and the inhabitants of the said territory, it is hereby made known that in the event of any discension or dispute arising from the classes aforenamed within the said territory, except those employed by the Sirkar and its dependents, the Resident at Hyderabad, or other officer whom he may consider it desirable to vest with the same shall enquire into and punish any such offences."

This proclamation places the jurisdiction exercised over Europeans by the Resident in Hyderabad in a separate category. But the position in other important States is different. When the claim of exclusive jurisdiction over Europeans was put forward in Bhopal and Travancore, those States protested. There were numerous cases prior to this period in which Travancore had exercised jurisdiction over Europeans and when in 1871 the Residency demanded in one case that the right should be surrendered, the government of the State protested vigorously and took up the matter for direct negotiation especially as in 1837 the Government of India had expressly declared that the Europeans living in Travancore, not being servants of the British Crown, were subject to the laws of the State, and the State had continued to exercise jurisdiction over them. When these facts were pointed out to them the Government of India declared that the position in 1837 when the courts in British India were not competent to try European British subjects not being servants of the Crown for offences committed outside British India was totally different from the position in 1871. The establishment of the High Courts in India and the consequent amendment of the law had given authority to the British Indian Courts and therefore it was claimed that the State could not be allowed to continue to exercise its rights. As a result of the State's persistence, a compromise was arrived at by which the State appoints a European magistrate and a special European Judge with limited powers of punishment. The appeal lies to the Madras High Court and clearly the law by which the delinquent is tried is British Indian law.

The position was in a sense regularised by the foreign jurisdiction Act of 1873[1] and since then all assumption of power over Europeans has been based on that Act. But it is not clear how that act can be depended upon for the exercise of jurisdiction where the right was not granted or ceded independently. As Jenkyns in 'British Rule and Jurisdiction beyond the Seas' points out: "The Act does not confer any jurisdiction on the Crown, but facilitates the exercise by the Crown and its officers of jurisdiction acquired *ab-extra*. The same view is upheld by Tarring[2] in his British Consular Jurisdiction in the East. The Foreign Jurisdiction Act is, as Lord Haldane has said in Sobhuza II *v.* Millar[3] really only "concerned with definition and secondary consequences rather than with new principles."

There are however three important cases which seem to go against this point of view. They are, R. *v.* The Earl of Crewe. (1910. 2. K. B. at p. 576); in *re*: Southern Rhodesia (1919. AC. 211.); and Sobhuza II *v.* Millar (1926 AC. at p. 528.) The judgments in these cases would suggest that the exercise of jurisdiction may be valid under an order in council or by assuming jurisdiction by the Act of State. The Foreign Jurisdiction Act was in these cases used as a machinery for *promulgating* laws. These cases do not give authority to the view that the Foreign Jurisdiction Act gives to the Crown the right to exercise jurisdiction in the territory

1 1902, p. 154.

2 Tarring—British Consular Jurisdiction in the East. 1887. p. 13.

3 Sobhuza II *v.* Millar, 1926 AC. at p. 528.

of a foreign prince who has neither surrendered his right nor acquiesced in its violation for a long period of time. Before 1861, no such right was claimed or exercised by the British Government and except in the case of the States that voluntarily surrendered, there was never any legal acquisition of such right by the British Government.

After the Indian States raised the question of the legality of the jurisdiction alleged to arise from the Foreign Jurisdiction Act, the British Government has shifted the ground and claimed that their right is based on paramountcy. In a recent communication addressed to the Patiala Government, it was stated: "In regard to European British subjects, the Government of India have remarked that the criminal jurisdiction of the British courts over such subjects committing offences in Indian States has consistently been claimed; this jurisdiction is based on the prerogative of the paramount power."

It is undeniable that the British Government has the right of protecting the interests of Europeans resident in Indian States and of seeing that they receive just and fair treatment. But the ousting of state jurisdiction over this class of people is a survival of the period of capitulations, and should be given up in those states whose judicial administration reaches a specified standard.

Exclusive jurisdiction is claimed by the British Government over its Indian officials accused of crimes in Indian States. The Indian Legislature enacted in

1865 a law in which it claimed that it had power to deal with offences committed by its subjects and servants within the territory of an Indian Prince. So long as this was merely an assumption of rights with regard to its own subjects, it was no doubt within the competence of the Indian legislature. But when it is claimed that this Act ousts the jurisdiction of the state court it is obviously taking up an untenable position. A British Indian official committing a crime in an Indian State is subject to the jurisdiction of the *locus delicti* unless the State itself has surrendered that right. A parliamentary Statute or a British Indian law can make the delinquents subjects to their own law but it is obvious that it cannot take away the jurisdiction of the State within whose territory the crime is committed.

The territorial character of criminal law is universally admitted. In R. *v.* Ganz, Pollock laid down "it is and must be perfectly clear that each person who is within the jurisdiction of the particular country in which he commits a crime is subject to that jurisdiction." It is of course open to British Indian Tribunals to try afresh and punish their own subjects for crimes committed outside. But till they return, the jurisdiction over them vests in the courts of the territory where the crime was committed. No other practice is possible and this is recognised in the criminal law of countries which invest their courts with extra-territorial jurisdiction. The Statutes of Parliament expressly recognise this limitation. Article 5 of the Code d' Instruction Criminelle provides that the extra-territorial jurisdiction of the French tribunals can only be

invoked after the return of the accused to France.[4] Similar provision is contained in Article 5 of the Penal Code of the Netherlands and in Article 4 of the German Penal Code. Even British Indian decisions support this view. In the case of Bishan Dass (Indian Cases Vol. 6, p. 640) the court held that they could find nothing in the Indian Penal Code to preclude the concurrent jurisdiction in Indian States over Indian subjects of His Majesty. But the Government claims that in virtue of its own legislation, it can oust the jurisdiction of the *locus delicti*. This is a claim which cannot be justified either in law or in policy.

The practice with regard to the limitation of jurisdiction over Indian officers and privates of the Army is based on a circular issued on a reference by the Mysore Government. The Mysore Government was informed that the jurisdiction of Indian State Courts in the case of Indian officers and soldiers was limited to—

(1) the case of a soldier who while on leave within a State commits an offence which renders him subject to arrest;

(2) that of a soldier who while on leave within a State is arrested for an offence committed by him in that State on some previous occasion;

It was further laid down that an offence committed by an Indian soldier in a State when not on leave was not within the jurisdiction of the State Courts; that

4 Beauchet, Traité de l' extradition at p. 86.

La loi penale est principalement territoriale et la competence de juges due lieu de l' infraction doit primer toutes les autres.

when arrested for crimes committed while not on leave the soldier should be handed over to the nearest military authority.

This Circular was not accepted by all the States. Patiala, though under a Regency at the time, strongly protested against it and after much argument it was agreed that His Highness' Government will generally be allowed to exercise jurisdiction over sepoys committing offences in the Patiala State. Numerous cases have arisen recently in other States, when the British Government has put forward this claim and denied the rights of the States to try men, often their own subjects, who are serving in British forces. The law on this matter is yet indefinite in the sense that no agreed formula has yet been arrived at.

Another important and complicated limitation of the jurisdiction of Indian States in their own territory is in regard to land leased for railway purposes. Originally the Government of India treated all lands through which a railway passed as being practically British territory on the ground that the States had surrendered their jurisdiction. The States however held that cession of jurisdiction was not absolute and except for matters arising out of railway administration the sovereignty and jurisdiction remained with the States. This question came up for judicial decision in the case of *Mahommed Yusufuddin* v. *Queen Empress* (24 I.A., p. 137). The facts of the case were as follows. On a warrant issued by the Magistrate of Simla, Mr. Crawford, Railway Magistrate arrested Mahommed

Yusufuddin, a resident of the Hyderabad State at Sirgampatti station on the Nizam's Railway. On the matter going up to the Privy Council, Lord Halsbury held that the territory on which the appealant was arrested was Nizam's territory and that authority to arrest in such territory must therefore be derived from the Nizam; that from " a perusal of the correspondence that passed on the subject between the Nizam and the Government of India, it is clear that *the only jurisdiction conferred is a criminal and civil jurisdiction along the line of the Railway,* as is the case on other lines running through independent States " and that this does not mean that any person is open to criminal procedure for an offence alleged to have been committed elsewhere.

As a result of this decision the Government of India insisted on a virtually complete surrender of State jurisdiction on railway lands, except when such Railways were exclusively within the territory of a State. They laid down (1891) " so long as a Railway is isolated in one Native State, the British Government is not ordinarily concerned to exercise jurisdictional authority. But if any line passes through two states, then it becomes necessary to obtain *cession* of jurisdiction. The Princes however have never accepted the position that the Government of India have the right of compelling them to surrender full jurisdiction over lands ceded by them for railway purposes. Their view was that where there is cession of jurisdiction it gives competence to British courts to hear cases arising within the railway limits and no others. In addition

it gives authority to have railway police for purposes of making the jurisdiction effective. It confers no sovereign rights of any other kind, either to legislate to impose taxation or to carry on executive government. The matter came up for discussion before the Standing Committee of the Chamber of Princes. A Committee of Ministers was appointed to go into this question and a report was submitted by that Committee on the 7th January 1923. This report was not found acceptable and new principles were formulated. They expressed their disapproval of the policy of ceding lands and claimed that there should be complete and permanent retrocession where the State or a company or association of individuals authorised by the State is either the owner of the Railway or at least has a substantial interest in it or works it. They claimed that in through lines exercise of civil and criminal jurisdiction should be limited to the original purpose and in others it should be limited to the minimum necessary. In the matter of criminal jurisdiction, the States claimed that their jurisdiction should be recognised (a) in cases where the offenders have escaped to Railwaylands, (b) by railway officials in railway lands, (c) over passengers, etc. on the station. The Government of India did not agree to these demands but they appointed a Committee to go into the question of minimum jurisdiction. No agreement has been reached as a result of their discussion. In discussing this question it is necessary to keep in view certain distinctions with regard to Railway lines. The

Railway lines in India which run through the States can be classified under the following heads:—

(1) Strategic lines (e.g.) (N.W.R.) (2) Arterial lines (G.I.P. & B.B. & C.I.), (3) Non-strategic lines which though owned by one state pass through the territory of another state (e.g., the Cochin Railway) or is owned by two or more States (e.g., Bikaner-Jodhpur Railway) The formula of minimum jurisdiction is applicable to all these alike; only, in the case of the strategic and arterial lines, the minimum required will be almost complete jurisdiction, while in the case of non-strategic lines owned by a single State and passing completely through its territories, the minimum may be stated to be nil.

Where the State owns the railways it should also exercise jurisdiction. Even the Butler Committee agree that on such lines criminal and civil jurisdiction should be handed over to the States subject *inter alia* to the conditions that adequate control over the working and maintenance of the line is retained either by the application of an enactment and rules similar to the Indian Railways Act and the rules made thereunder or otherwise; and that the State will grant permission for such inspection of the line by Government railway officials as may be considered necessary.

The equivocal position of railway lands raises the question of extradition, municipal government and fiscal acts in relation to those areas. The British Government used to consider that the procedure with regard to extradition is applicable in regard to offenders

from States who take refuge within railway territory. If it is recognised that these areas are under the sovereignty of the State no question of extradition arises. The Princes have stated that in their view "the application of extradition laws to these lands is, under the circumstances, a negation of political law, a defiance of express guarantees given to most States, immaterial to Railway administration and positively harmful to the control of crime in the States".

The practice with regard to Railway jurisdiction is not unanimous. The jurisdiction on the Bangalore-Mysore line originally rested with the Mysore Government but when the line was extended to Harihar, that jurisdiction was taken over. In regard to the Bowringpet-Kolar line, full jurisdiction vested in the Government but in 1915, it was retroceded to the Darbar. In regard to the main line also Mysore enjoys certain important concessions, e.g., the right to remove sandalwood from railway lands. In regard to Indore the practice with regard to extradition is different from that which is followed in other states owing to an original stipulation that offenders escaping to the railway lands will be surrendered to the State.

It was only after long correspondence that the Government agreed "that the extradition of persons other than British subjects may be granted from railway lands for all cases of offences and not merely those enumerated in or specified by the Governor-General in Council under the schedule of the Indian Extradition Act of 1903 as applied to those lands, for which alone

the extradition of British subjects will usually be granted."

In this connection may also be discussed the law relating to extradition from and to Indian States.

With many States there are extradition treaties which govern the surrender of criminals. A *prima facie* case has to be established and British India or the State concerned surrenders the criminal to the jurisdiction of the *delicto loci.* This may appear on the face of it to be an equitable arrangement, but in fact it is not so. It has been claimed that the *prima facie* evidence which British Indian authorities should submit is for the satisfaction not of the State but of the Political Officer. As Col. Newmarch wrote to Gwalior. "If I consider the *prima facie* evidence sufficient, that opinion should be enough to justify the extradition and trial of accused persons by a British Court."

A few of the other difficulties which have been experienced in regard to the existing extradition relation between the Indian States and the Government of India may also be mentioned here:—

1. The provision of Sections 8-A and 15 of the Act XV of 1903 leave it entirely to the discretion of the local Governments, under the Government of India to decline to surrender offenders inspite of a warrant having been duly issued by the Political Agent.
2. Distinction is made for purposes of the surrender of deserters from Imperial Service Troops and the Military Forces of States,

3. The British Government often demand surrender of persons accused of offences which they themselves do not treat as extraditable for purposes of surrender to Indian States.

Generally speaking the actual position is that in regard to the major States which have no treaty of extradition, arrangements are on the basis of reciprocity; but that principle is subject to the right *claimed* by the Government of India as Paramount Power to demand the surrender of any class of criminals and the right to refuse extradition in cases referred to in rules 3 and 5 of the Extradition rules.

The British Courts, it need not be said, have no jurisdiction in Indian States. Naturally it follows that they are powerless to issue commissions, or enforce orders.

Mr. Justice Jai Lal of the Punjab High Court observed in a recent case as follows:—

"I must now advert to a question of great importance relating to the trial of criminal cases that arise out of this case. I have already indicated that the delay in the disposal of this appeal was due to the inability of the Agent to the Governor-General, Punjab States, to execute the commission for the examination of the defence witnesses issued to him and that it was only through the good offices of the Punjab Government that the Agent consented to secure the attendance of the witnesses before the Magistrate. Otherwise, as the District Magistrate has remarked in the correspondence the matters had reached an *impasse*. The question

must, however, be solved whether section 503, Criminal Procedure Code, has any practical utility with regard to witnesses residing in the territories of any Prince or Chief in India specially in the Punjab. If the view of the Agent is correct that he has no power to compel the attendance before him of witnesses residing in an Indian State, then it is a matter of serious consideration for the courts in this province whether they should hereafter issue any commissions for the examination of such witnesses to that officer at all and in that case the futility of the statutory provision in sub-section (2) of section 503, Criminal Procedure Code, is apparent. It is manifestly unfair to retain a provision in an enactment which has no practical utility or which the courts concerned are incapable of enforcing or would consider it unfair to enforce. Then there may be cases in which it may not be desirable or feasible to send a commission to a Magistrate who is subordinate to a Prince or Chief in India; in such cases, if the view of the Agent is correct, it will not be possible to examine any witnesses who are resident within the territory of such Prince or Chief unless they appear voluntarily in the British Indian Courts. The practical effect of this state of affairs will be that the courts must refuse to issue processes, whether at the instance of the Crown or at the instance of the accused, for the attendance or examination of witnesses which they are unable to enforce, with the result that a fair trial of several criminal cases will be seriously hampered.

"It is, however, inconceivable to me that the Government introduced a provision in the Criminal

Procedure Code which has no legal sanction or to carry out which they have made no adequate arrangements. If it is a fact that the officer representing the British Government in the territory of a Prince or Chief has no power to compel the attendance before him of witnesses residing in such territory, then in my opinion the Government must consider the question of either securing such powers or of repealing the law which authorises criminal courts to issue commissions to such officer as it is unfair to all concerned that such courts should be expected to pass orders which they cannot enforce."

Whatever the Criminal Procedure Code may say, no provision made in it can give authority to any political officer to compel attendance before him of any subject of the State. The State, through its judiciary alone, can summon its subjects and the taking of evidence on commission is matter for negotiation and agreement between the Government of India and the States.

The question of the nature of the jurisdiction exercised in certain states notably in Kathiawad, B. & O. States and in Simla Hill States by Political Officers is one that requires consideration. Clearly the law they apply does not derive its authority from any statute or from British Indian legislation. There is no appeal from them to the High Courts in British India, nor even to the Privy Council except when the Political Officer exercises jurisdiction said to be vested in him by the Foreign Jurisdiction Act. In the famous case of Hemchand Devchand *v.* Azam Shankarlal, the nature of

this jurisdiction was discussed at length by the Privy Council. Their Lordships stated—

"The real question is whether in cases like those now before Their Lordships, the action of the tribunals in Kathiawad and of the Governor-General in Council on appeal from those tribunals is properly to be regarded as judicial or political. And at this point a distinction arises between the two cases under appeal because the first of them has been disposed of as a civil, the second as a political case. As to the cases classed as political, Their Lordships think there is no room for doubt. The rules issued from time to time for the guidance of the Political Agent treat the disposal of such cases as falling within his "diplomatic or controlling function" and direct him to dispose of them as he thinks proper. And all the other provisions relating to such cases indicate purely political and not judicial action.

The question relating to cases classed as civil gives rise to more difficulty but, upon the whole, Their Lordships are of opinion that no substantial distinction can be drawn for the present purpose between the two kinds of cases.....

"The instructions from time to time issued by Government as to the disposal of cases suggest strongly that the exercise of jurisdiction, both by the Political Agent and by the courts below him, is to be guided by policy rather than by strict law.....

.....

"The further appeal to the Secretary of State in Council is a fact of clearer import. In Lord Salisbury's

despatch of March 23, 1876, the practice of such appeals is dealt with as a thing at that date already fully established, and it continues to the present day in civil as well as political cases. This system of appeal to the Secretary of State affords strong evidence that the intention of Government is and always has been that the jurisdiction exercised in connection with Kathiawad should be political and not judicial in its character.

"What occurred in and after 1876 points to the same conclusion. In the despatch of March 23, in that year, already referred to, the Secretary of State, Lord Salisbury, suggested that an Act should be passed, general in character but intended specially for the case of Kathiawad, enabling the Governor-in-Council, when dealing with appeals, to refer any statement of facts or law to the High Court for its opinion. The Bombay Government opposed the suggestion, and in an official letter of August 22, 1878, stated their grounds of objection. After distinguishing between "a system of government according to the will of the ruler" and "a system of government according to law", it was said: "The cases which come before this Government for adjudication are cases which have arisen in States still administered on the former principle." "Such cases can only be justly disposed of on principles of equity in the fullest sense of the term, and not in the circumscribed sense which is familiar to the practice of the High Courts; and sometimes consideration must be given to the political expediency which underlies the relation in which the Government stands to the protected States."

The objections so stated prevailed. In 1879 Lord Cranbrook renewed the suggestion of his predecessor, but effect has never been given to it."

The limitation of jurisdiction of Indian States in relation to certain class of estates and jagirs within their territory is a special and important aspect of Indian State law. This limitation is seen mainly in the succession states of the Mahratta Empire, in Central India and in Kathiawad. The position is not altogether similar in regard to each of these as the political circumstances were altogether different.

In the settlement that followed the final breakup of the Mahratta Empire and the settlement of Central India, the British Agents guaranteed certain estate holders within the territories of the bigger princes, the continuance of their rights and privileges. In some states, these guarantees were the result of a mediation invited by the Ruler himself as in the case of Gwalior; in others, it was a part of the general settlement, as in Indore. It is in Gwalior that the system developed to its fullest extent and it is there that the principles and practices underlying it may be studied in full.

In 1817 the Maharaja Dowlatrao Scindia requested Sir John Malcolm to effect a settlement with certain of his nobles. The scope of this request was thus explained by Malcolm himself in his letter to Captain Tod (letter dated 11th August 1818) "I have received from His Highness a kind of superintendence over his Amildars, or rather he has referred them to me for advice and aid so far as I can under our relations afford it." He added that the Resident has been asked to assure the

Maharaja that I am very sensible of the great confidence which he reposes in me and I will endeavour by my advice and influence to promote the general prosperity of those parts of his Dominions which are in my vicinity." Malcolm made certain settlements some of which were guaranteed by the British Government while others were left to the discretion of the Ruler.

Wherever the British Officer also signed the settlement, a guarantee was understood. Originally under the settlements only certain emoluments were guaranteed. These settlements were made on behalf of the Rulers and payments which were hereditary were guaranteed by the British Government. On this has developed the Guarantee System.

In course of time the Political Officers began to encroach on the rights of the suzerain Darbar on the basis of uniformity, principles and precedents evolved by officers interested in extending their own personal influence. A theory of constructive guarantee was promulgated by which any estate even if it did not possess an engagement countersigned by a Political Officer was construed as a guaranteed estate if payments had at any time been made or a sanad forwarded through a political officer, or if a jagir-holder possessed a testimonial given by a political officer without reference to the Darbar. By this method many estates which had no claim to an original guarantee came under the supervision and control of political officers and the jurisdiction and rights of the suzerain Darbar became limited.

Other and equally interesting doctrines were promulgated and enforced. It is worth while examining some of these to show the methods which were followed at one time by the officers of the Government of India. It was for example, laid down at one time that an estate which is guaranteed in part should be considered as being guaranteed wholly. Thus if a jagirdar held one estate in one district where he was entitled to some privileges guaranteed by the British Government, it was held that the same privileges should be extended to his other holdings. Again it was an accepted principle of political officers that a guarantee in one State gave to the holder privileges in other States also. Thus if a jagirdar of Indore had his estate and payments guaranteed to him in the Holkar State and the same jagirdar enjoyed an ordinary holding in Gwalior, the Government declared that the guarantee given as against the Holkar should be held to extend to Gwalior also. How this principle has been made to work may be illustrated by the case of the Thakur of Naulana. The Thakur was guaranteed his cash allowance from Indore through the mediation of General Malcolm. The endorsement on the Sanad contains the signature of Brothwick the Political Agent. The same jagirdar receives a Tanka from Gwalior. The sanad from Maharaja Scindia reads as follows:—

"The tanka which you formally received for the pargannas of Haveli, Oojein and pan Behar, having been now stopped, the Circar has fixed in lieu thereof an annual cash balance in the mahals for your maintenance." The sanad does not bear the

counter-signature of a British officer and so far as Gwalior is concerned, Naulana was not a guaranteed estate. But because the rights of the Thakur were guaranteed in Indore, the Central Indian Agency began gradually to hold that Naulana was a guaranteed estate in Gwalior also.

The guarantee system was used as a method of direct Government by Political Agents. The intervention of the suzerain states in the affairs of the jagirs was declared to be against the guarantee which it should be remembered extended in most cases only to hereditary payments. The political officer claimed all the effective authority of the suzerain though by the engagements he had only undertaken to guarantee the payments or at the most the rights enjoyed by the estate holder. Clearly the rights not so guaranteed were enjoyed only at the will and pleasure of the suzerain government but by a process of inverted reasoning it was laid down that the residuary authority rested with the estate holder. Mr. Henvey in fact laid down that while disuse could always be pleaded against a suzerain, prescription could never be pleaded against a feudatory. Thus the determined attempt of the Government for a whole century was to interpret the guarantees in every way against the suzerain States and use the limited rights, given to the British Government, for erecting the estates into separate sovereignties. This policy succeeded completely in the case of jagirs and estates where the jurisdiction of the suzerain state had been expressly debarred as in Ratlam, Jaora and Rajgarh.

The Foreign Department letter No. 352 A., dated the 31st March, 1864, explained the policy in this connection by pointing out "*the expediency of weakening* the Mahratta powers by having a belt of Rajput chiefs and girassias owing the security of their estates and the comparative independence of their status to the intervention of the British Government."

The limitation of the sovereign's authority over these estates was mainly in the sphere of jurisdiction. From 1863 attempts were made to oust the jurisdiction of the suzerain states over the guaranteed holdings. In that year the Political Agent at Bhopal asked for orders as to how civil claims within the guaranteed estates should be dealt with. The Agent to the Governor-General decided on his own authority that the decision lay with the estate-holder subject to the right of the Political Agent to intervene. Where the Political Agent's right comes to intervene to the exclusion of the rights of the sovereign state is not clear. The Gwalior State pointed out that in those estates where the suzerain's jurisdiction was not debarred, the superior jurisdiction rested with the suzerain and not with the Political Agent, but the Agent to the Governor-General refused to reconsider the question. Even when the Government of India intervened, as it did in 1871, when in the Resolution No. 158 J. of the 8th of April it was laid down that the Political Officers' jurisdiction in the States should cease, Sir Henry Daley who was then the A. G. G. refused to give effect to it and ordered it to be filed.

The practice from 1864 till recently was that the suzerain State was excluded from exercising jurisdiction in estates which the Government of India declared were guaranteed. No distinction of any kind was made. Of course it is clear that estates in whose internal agairs the suzerain State is expressly excluded from interfering were altogether free in jurisdictional as in other matters. In the case of states where the guarantee is either for the tenure or for the *tanka* or for some payment, the jurisdiction clearly continues with the sovereign and obviously not with the estate holder and even more obviously not with the guarantor. But when a suzerain State claimed that "where a sanad of guarantee does not preclude the Durbar from exercising civil and criminal powers, the British guarantee protects the holder merely from undue interference with his possession of the village and jurisdiction in judicial matter consequently rests with the Darbar", the Central India Agency replied as follows in 1839:—

"The true position as founded on the policy of the British Government in Malwa and fortified by the practice of the Central India Agency is that when the sanad does not expressly reserve jurisdiction to the Durbar, the jurisdiction in civil and criminal cases lies primarily with the guarantee holder and secondly, i.e., in serious cases, with the Political Agent". The principles and assumptions involved in this statement deserve examination. First, it is accepted that the rights of these estate holders are derived from their sovereign and are merely guaranteed by the British Government. The principle enunciated is that unless

there is in a sanad purporting to guarantee certain rights to an estate holder, an express reservation in favour of the grantor, it is the view of the Central India Agency that all rights except those reserved go to the grantee. That such a perverse view should have been taken and enforced for a considerable time only shows that the Government of India had the strength to secure obedience to its arbitrary dictates.

It is clear that there is no authority either statutory or political for the exercise of this jurisdiction.

This exclusion of the jurisdiction of the suzerain State extended not merely to civil and criminal cases but to determination of successions, sanctioning of adoptions, levying of cesses for general objects like roads, customs and abkari revenue, statistics, adjudication of boundary, census, etc.

The question was brought to a head by the late Maharaja Scindia and the Government of India withdrew from the position which it had taken up and accepted the principle that so long as the estates were maintained in the terms of the guarantee, the Paramount Power would not interfere in the relations between the suzerain State and its feudatories. The same principle was given effect to in the relation between the girassias and their Rulers in Kathiawad, between the Bhoomias and the Maharana of Udaipur and the jagirdars in Kolhapur and other States. The position now is that where there is an express guarantee, the Government of India will see that the terms of the guarantee are not set at naught by the suzerain State;

but the Government of India will not interfere between the sovereign and the jagirdar in their ordinary relations. They will withdraw from the position of authority which they held in regard to these states and the superior jurisdiction in the estates will vest not in the Political Agent but in the suzerain State.

LECTURE V.

THE LAW AFFECTING RULERS OF STATES AS SOVEREIGNS.

I shall attempt in this lecture to trace the law affecting the Rulers of States as sovereigns.

It is recognised by all British Courts that Indian Rulers are exempt from the jurisdiction of British Courts. In Statham *v.* Statham[1] the Court laid down this principle (Per Bargrave Deane, J.), Grotius, Prefedori and Vattel agree that in unequal alliances the inferior power remains a sovereign state..... the weaker power may exercise the rights of sovereignty so long as by doing so no detriments are caused to the interests or influence of the superior power..... Vattel says a weak state which in order to provide for its safety, places itself under the protection of a more powerful one and engages to perform in return several offices equivalent to that protection, without however divesting itself of the right of Government and sovereignty, does not cease to rank among the sovereign states who acknowledge no other law than the law of nations.

They enjoy complete legal immunity in criminal matters so far as British Courts are concerned. (Chapter 28 of Act 10 of 1877). In civil matters they can be rendered amenable to the jurisdiction of the courts by a previous order of the Governor-General in Council under Section 86 of the British Indian Code of Civil

1 (1912, P. D. p. 92.)

Procedure, or if they accept the authority of the court. The Section further provides that the sanction of the Governor-General in Council "shall not be given unless it appears to the Governor-General that the prince, chief, ambassador or envoy—

(a) has instituted a suit in the court against the person desiring to sue him, or

(b) by himself or another trades within the local limits of the jurisdiction of the court, or

(c) is in possession of immoveable property situate within those limits and is to be sued with reference to such property or for money charged thereon.

A tenant of such immovable property has the right of suing the prince without the previous sanction of the Governor-General in Council in matters relating to the property. The absolute immunity enjoyed by Rulers except in these three specially enumerated cases can be waived by a Ruler if he so chooses. The question as to who is entitled to plead this exemption was once raised. In the case of Kanjubai Ajubhai and others *v.* the Desai of Patadi, the question arose whether the defendant was a Ruling Chief within the meaning of Sections 432 and 433 of the Civil Procedure Code. The Desai is a Thalukadar of the fifth class in Kathiawad and the District Judge held the view that only the first and second class Talukadars come within the definition of Ruling Chiefs as the others do not have plenary jurisdiction over their subjects. But the High Court held him to be a Ruling Chief and overruled the fanciful differentiation of the District Judge.

An Indian Prince cannot be sued in a court of British India without the previous consent of the Governor-General in Council whether the suit is brought against him in his sovereign capacity or in his private capacity such as a trustee of a public institution in India. This point was decided in the well known Madras case of Narayan Moothad *v.* The Cochin Sarkar. The Madras High Court Judgment stated:—

"It was argued before me however that in this case the Raja of Cochin was sued not as such Raja, but as trustee of the temples referred to in the plaint and that section 86 applied only in cases where a prince or chief is sued in his capacity as such prince or chief. I am unable to accede to this argument. I see nothing in Section 86 to warrant a prince or chief being brought on record except on the terms referred to in the section. The Section seems to me to be exhaustive with reference to the question when such a chief or prince can be brought on the record against his wish. I see nothing to support the contention that the question whether or not a prince or chief can be brought on the record depends upon the relief sought or upon the question whether the acts alleged to constitute the cause of action are of a sovereign or of a private character....." It was held in the Maharaja of Jaipur *v.* Dalji Sahai that the Governor-General in Council has no power to give consent to a suit except in the three instances specifically referred to in clauses (a), (b) and (c) and that if leave is granted in cases not falling within any of the three clauses, courts of law

are required to dismiss the suit as against the Prince or Chief.

In the case of Beer Chandra Maniya *v.* Rajkumar N. C. D. Burman (I.L.R. 1883 of Calcutta) it was decided that the fact that the defendant having waived his privilege in previous suits brought against him, does not give the court jurisdiction to entertain suits in which he pleads that he is not subject to that jurisdiction. Even if the action was taken when the prince had not ascended the gadi, the immunity will run from the time he becomes a Ruling Prince. (Maharaja of Rewa *v.* Sivasaranlall, A.I.R. 1921, Patna 23.)

This judicial immunity does not, it need hardly be said, render the Rulers of States unaccountable for their personal acts. It is true that their actions are not judged by the ordinary canons of municipal law. But as is well known, the Government of India on the prerogative power of the King, punishes a Ruler in cases of grave misconduct. In this connection, it is necessary to make a clear distinction between the acts of the Ruler in his capacity as the head of the State and as an individual. If as a Ruler in his acts of government, he does injury to anyone, there can be no personal responsibility attached to it. If, on the other hand, the Ruler in his private capacity takes the life of a citizen or otherwise commits grave offences, he is accountable, though not before a municipal court. There are numerous cases known to the students of Indian Public Law to establish this latter point.

The most important occasion on which a Ruler was actually tried before a special tribunal was when

Malharrao Gaekwar was accused of an attempt to poison the British Resident. The facts of the case are briefly as follows:—

Owing to gross maladministration, as reported by the Resident, a commission of enquiry was appointed in 1873 and the Gaekwar was officially 'warned', that he must mend his ways. In 1875 a charge was made against the Gaekwar that he attempted to poison the Resident. On the 13th of January the Maharaja was placed under arrest and a proclamation was issued constituting such an attempt a high crime against the Queen. To try the Gaekwar a special tribunal was constituted consisting of three British Officers, one Indian Ruler and the Dewan of an Indian State. In spite of the arguments of Sergeant Ballantyne, the European members of the court found for the Crown and the Gaekwar was deposed and his sons disinherited.

There have been a few other cases of an unimportant character to one of which allusion may be made here. Gopal Krishna Rao, Chief of Aundh was accused of murder and dacoity in 1906 and the case was investigated by a special tribunal. He was suspended for five years but was deposed in 1909.

This case stands on a slightly different footing. The Chief of Aundh is one of the Maratha jagirdars and though he is a ruling prince, he does not stand in the same category as a sovereign prince enjoying full powers. In any case neither of these instances is a recognised precedent.

The question of deposition for misgovernment and disloyalty stands altogether on a different footing. The

difficulty so long has been that owing to personal rule in the States, it has been impossible to draw any clear line of distinction between the two aspects of this problem. In cases of deposition or curtailment of powers for administrative reasons, there has often been a very large element of personal misconduct also. The most conspicuous example of the curtailment of the powers of a Ruler without in any way casting aspersions on his private character is the case of the late Maharana Fateh Singhji of Udaipur. In that case there was not even the shadow of personal misbehaviour alleged by the Government. On the other hand, it is unequivocally stated that the Maharana's character and genuine desire for the betterment of his people were appreciated by the British Government. The only reason given was that there were various administrative deficiencies requiring urgent attention, which the old age of the Maharana prevented him from giving. The case of His Highness Sri Tukoji Rao Holkar of Indore illustrate the converse proposition. The Government of India offered the Maharaja an enquiry on a matter in which his personal responsibility for an act in British India was the matter at issue.

Though therefore a distinction can and should be made between the personal and the administrative acts of a Ruler, in the vast majority of cases in which the Indian Public Law entitles the Paramount Power to take action, these aspects are mixed up in a manner impossible to disentangle. It is wellknown that in the Bharatpur case the administrative responsibility of the Maharaja for the financial bankruptcy of the State was

mixed up with the personal responsibility of the Ruler for the acts of a favourite. Examples of this nature can be multiplied. It should however be remembered that in no case have the courts in British India any jurisdiction—even when a Ruler has ceased to exercise sovereign rights and has thus become amenable to the jurisdiction—over acts done by the Ruler when he enjoyed the status of a Ruling Prince. In the recent case of Sowkabai Rajpukar *v.* The ex-Maharaja of Indore where the plaintiff had brought an action against the ex-Maharaja for wrongful restraint, the Bombay High Court held that as they were the acts of a sovereign prince no cause of action lay.

The unsatisfactory character of the methods of determining responsibility in cases where Rulers of States were involved has been a source of friction between the States and the Government of India. This matter was taken up for discussion when the late Mr. Montagu visited India and the proposals contained in Chapter X of the Montagu Chelmsford Report were the outcome of the deliberations at that time. These were later embodied in a Resolution.

The Resolution reads as follows:—

"The Government of India have had under consideration the question of giving effect to the recommendations contained in paragraph 309 of the Report on Indian Constitutional Reforms and are pleased to prescribe the following procedure for dealing with cases of the nature therein referred to:—

When in the opinion of the Governor-General the question arises of depriving a Ruler of an important

State temporarily or permanently of any of the rights, dignities, powers or privileges, to which he as a Ruler is entitled or debarring from the succession the heir-apparent or any other member of the family of such Ruler, who according to the law and custom of his State is entitled to succeed, the Governor-General will appoint a Commission of Enquiry to investigate the facts of the case and to offer advice unless such Ruler desires that a Commission shall not be appointed.

The composition of the Commission will ordinarily include:—

(a) A judicial officer not lower in rank than a Judge of a Chartered High Court of Judicature in British India.

(b) Four persons of high status of whom not less than two will be Ruling Princes.

The names of the persons proposed as members of the Commission will be communicated to the person whose conduct is the subject of enquiry, and he will have the right of objecting without grounds stated to the appointment of any person as a Commissioner. If objection is so taken, the place of such person will be supplied by another person nominated by the Governor-General, but in that case there shall be no further right of objection.

The Governor-General will convey to the Commission an order of reference stating the matter referred for enquiry. The Ruler or other person whose conduct is the subject of enquiry, will be entitled to represent his case before the Commission by Counsel or otherwise.

The Commission after hearing the evidence placed before them by direction of the Governor-General and the representations of the Ruler or person, whose conduct is under enquiry, will make their recommendations to the Governor-General in a report. The report will set forth the findings of the Commissioners on the facts relevant to the matter referred for their consideration and their recommendations will be accompanied by a copy of the proceedings and documents placed before the Commission.

The proceedings will ordinarily be treated as secret; but if the Ruler or person, whose conduct is under enquiry, desires publication, the Government of India may publish the proceedings unless there are special reasons to the contrary.

If the Government of India disagree with the findings of the Commission, the matter will be referred to His Majesty's Secretary of State for decision. The Government of India will communicate to the Ruler or person, whose conduct is under enquiry, their reason for disagreeing with the recommendations of the Commission and invite him to make a representation. This representation will accompany the reference of the Government of India to the Secretary of State; when the reference comes before the Secretary of State, the Ruler or person will be entitled to present an appeal to the Secretary of State.

When the Government of India agree with the recommendations of the Commission, their decision will be communicated to the Ruler or person whose conduct

is under enquiry. The Ruler or person concerned will be at liberty to present an appeal to the Secretary of State against the decision of the Government of India.

The cost of the Commission, other than Counsel's fees, will be borne by the Government of India.

Nothing in this Resolution will be held to affect the discretion of the Government of India or of a Local Government to take such immediate action, as the circumstances may require, in the case of grave danger to the public safety.

The Resolution shall be applicable to the case of all States, the Rulers of which are entitled to membership of the Chamber of Princes in their own right; it is open to the Governor-General to apply the procedure laid down in this Resolution to other States also not included in the above category, in cases where it may be deemed advisable to do so."

There are some restrictions on the Princes in their capacity as sovereigns to which also attention may be drawn here. They are not permitted to purchase property for themselves in British India except with the permission of the Government. The law in British India makes no distinction between Ruling Princes and others in the matter of holding property. Anyone who is neither an alien of non-Asiatic origin nor an enemy can hold property in British India. In the case of Hajon Manick *v.* Boor Singh (I.L.R. 1885, 11, Calcutta, p. 17), it was held that there was nothing to prevent a foreign and feudatory state from holding immovable property in British India. In the case of the Maharaja

of Faridkot *v.* Anant Ram (A.I.R. 1929. 1, 10 Lahore 447) Jai Lal and Fforde, J.J. held as follows:—

"It is contended that under some circular of the Government of India the Ruling Chiefs are prohibited from purchasing immovable property in British India without the permission of the Government of India. No such circular was produced before us, nor was it stated under what legislative provision such a circular could be issued. It may be that for political, economic or other reasons the Government of India desire to restrict the purchase of immovable property in British India but before such a desire could be enforced through the law courts of this country, it must be shown that the circular issued by the Government of India is one that has the sanction of some law binding on the courts."

Besides, the Government insists that no prince can acquire or hold *private* immovable property because all such property has been declared to be state property.

In numerous cases the restriction against the acquisition of private property in British India by States or their Rulers has done great injustice. The following instances will bear this out:—

In 1914, the Maharaja of Rewa contemplated a suit in the British Indian courts to establish the claim of the Maharani to the Dumraon estate. The Maharaja was told that if he succeeded, he might be called upon to dispossess himself of the estate.

An Ahmedabad firm who had borrowed money from the Maharaja of Porbander on a mortgage of property, finding it impossible to repay the full loan in cash, paid four lacs by the due execution of a deed of transfer of the properties to the Maharaja. The Government of Bombay intervened and held up the registration and the Maharaja had to agree to dispose of the property within five years.

The practice with regard to this question may be summarised as follows:—

The Government of India discourage and virtually object to the acquisition of property in British India on a speculative basis. When such property is acquired by a Ruler as a result of bequest or succession, the question of allowing him to own it is a matter to be decided in each individual case according to the particular circumstances.

With regard to properties acquired at hill stations and presidency towns, the Government of India insist on the acceptance of the following conditions:—

(1) that the ruler will not effect any transfer of the property and create any encumbrance on it without the approval of the Government of India,

(2) that the Ruler will undertake to divest himself of the property whenever called upon by the Government to do so.

(3) That the Ruler will be subject to the ordinary Civil Courts in respect of the property.

(4) That the Ruler will enforce on his servants respect for municipal regulations.

(5) That the property will be acquired as State property and not as the personal property of the Ruler.

(6) That the property will not be dealt with in a commercial way.

(7) That the number of followers accompanying the Ruler, when in residence, will be limited.

(8) That there will be some responsible person in the locality in which the property is acquired to answer finally to the authorities and to sue and to be sued.

(9) That on occasions of the Ruler's visit to his property, he will have a qualified medical officer on his staff.

It is unnecessary for our purpose to discuss the question of ceremonials, precedence and other courtesies between the States among themselves and the Paramount Power. In the 17th, 18th and 19th centuries precedence of States and sovereigns occupied a greater position in international affairs than they do now. The rivalries between Spain and France in this matter led to war on more than one occasion and even now the position is not entirely free from claims and complexities. The reception of a sovereign and the ceremonials attaching to a State visit from one sovereign to another are now regulated by international protocol; the modes of address between them, their exact position

at formal parties, etc., are decided now by settled rules. In India, also, this question used at one time to exercise a great deal of difficulty. The records of Delhi Residency—much of which is printed in the Punjab Political Diaries—show what troubles the successive Governors-General had to face from the imperial pretensions of the descendants of the great Moghul; and as long as the phantom throne of Delhi was in existence, it was impossible to regulate the precedence among Indian Rulers as the great majority of Princes recognised in the Grand Moghul the source of their titles and dignities. After the Mutiny, the Government of India took up a more defined attitude and enforced a table of salutes involving naturally the decision of the precedence. The Government of India also tried by practice and usage to create a ceremonial code meant to emphasise their own paramount position. But the ceremonials in regard to the official reception of a political officer and the visit of the Viceroy to a State are not uniform in Indian States. An attempt has recently been made to regulate by agreement between the Government of India and the States the procedure to be followed on these occasions. The question whether the Viceroy should be met at the palace or at the top of the steps, whether the Ruler should receive the Viceroy at the station, etc., are interesting questions of etiquette but are hardly important from the point of view of inter-statal law.

LECTURE VI.

THE COLLECTIVE ORGANISATION AND CORPORATE ACTIVITY OF THE STATES.

In this lecture I propose to deal with the collective organisation and corporate activity of the Princes.

It is a point that requires constantly to be kept in mind that until the time of the great War the basic principle of the policy of the Government of India towards the States was their isolation one from the other. Even contiguous States were not permitted to have direct negotiations; and any administrative arrangements between neighbouring States required the sanction of the Government of India. Each State was an individual unit in relations with the paramount power and any attempt in the way of co-operation among the Princes was sternly discouraged. This policy was of course a survival of the distrust which was the natural result of the Mutiny and of the earlier dangers to British authority from the alliances of the great Mahratta Princes.

With changed circumstances the British authorities themselves began to feel that co-operation with the Princes as a body may bear fruitful results. Numerous suggestions in this behalf were made by Lord Mayo and later by Lord Lytton but the fear of offending the sensitiveness of the great Princes and the necessity for caution in dealing with so conservative a body as the Rulers of Indian States stood in the way of any constructive action being taken at the time.

What actually persuaded the Government of India to take the matter up seriously and invite the co-operation of the Princes in all India policy was the growth of the terrorist movement in Bengal and the fear of it spreading all over India. Lord Minto, the then Governor-General appealed to the Princes for their co-operation and consulted them on vital questions. Then came the Great war, when the active support of the Princes became essential for the safety of India. Periodical conferences of Princes and Chiefs were called and the Viceroy began discussing with them important questions of policy. The first meeting in this connection was held on the 30th of October, 1916. When in 1917 the Maharaja of Bikaner was selected to represent the Princes on the Imperial War Cabinet, Indian India may be said to have gained recognition as a collective entity.

In 1917, Mr. Montagu came out to India to discuss the problem of Constitutional Reforms. The Princes led by Their Highnesses of Gwalior, Bikaner and Patiala took that opportunity to place before the Secretary of State their view of the relations of the Government of India with the States and their proposals for the future. Naturally enough, the representative Princes took the point of view that the Government of India,—

(1) had in the exercise of what it called its paramountcy ignored the rights of the States as guaranteed to them by treaty,

(2) had developed usages and practices, which were applied without reference to the conditions of each State,

(3) had assumed powers, prerogatives and authority, which conflicted with the ancient and recognised rights of the States.

They pressed for an enquiry into this question and suggested that for the future an organisation of Princes should be created which would advise H.E. the Viceroy on all matters of importance to the States.

These discussions had two results. The Government of India circularised the States requesting them to forward for their information cases in which the States considered that their treaty rights had been infringed. From the replies received, the Government of India made a digest of 23 points, on which they agreed to codify their practice in consultation with the Princes so as to afford a clear and known political law over a range of subjects. Thus came into existence the famous Committee for the Codification of Political Practice. The first meeting of the Codification Committee took place on the 22nd of September, 1919.

The recommendations of Mr. Montagu and Lord Chelmsford in regard to the States are contained in Chapter 10 of the Joint Report. Though, as often happens, in the process of translating the proposals from the realm of theory into practice many of them underwent material change, the desire of the princes for a collective organisation, in however limited a form, was accepted as reasonable and the Chamber of Princes was brought into existence by Royal Proclamation on the 8th of February 1921 and its first session was held

from the 7th to the 11th of November in the same year.

The Chamber as constituted under the first Regulations had three unique features.

It was a Chamber of Princes and not a Chamber of States. It was the Ruler in his personal capacity who was entitled to be present, speak and vote in the House. This theory was pushed to the logical conclusion that a Ruler does not either by his speech or by vote commit his State to any particular point of view. Thus if the Ruler of the State A moves a Resolution in the Chamber suggesting that irrigation rights for example should be defined, it is open to him when the matter is referred to his State for opinion to object to the proposal and to refuse to accept any definition. Again on the same principle, no Regent unless he is a Ruler of another State in his own right is allowed the rights of membership, as the minor continues to be a member though he is unable to exercise his right.

The second feature of the constitution of the Chamber is that the Viceroy is its President and the Political Secretary its official Secretary. The Agenda was till very recently framed by the Political Department. It was therefore more or less an official gathering, where the subjects of discussion were strictly limited and the vote taken did not bind either the Government of the members.

The third and the most notable characteristic was that every Prince from the Nizam of Hyderabad to the

tiniest ruler who was elected to represent the smaller States had each one vote.

The weaknesses of this constitution are obvious and need not detain us here. It had one immediate result. The more important States, like Hyderabad, Mysore, Baroda, Travancore, Indore kept aloof from the Chamber and dissociated themselves from its deliberations.

In the circumstances, it was mainly due to the persistence and courage of a number of important Rulers like H.H. the Maharaja of Bikaner and the late Maharaja Scindia and His Highness the Maharaja Dhiraj of Patiala that the Chamber functioned at all: and the work it has done during the last 12 years has indeed been extraordinary. The success which it achieved during the 12 years was mainly due to the machinery of negotiation which it developed through the Standing Committee and the system of deliberation which grew up through informal Conferences. It is to these bodies that those who desire to understand the growth of opinion among the Princes should turn. It need hardly be said that the right of direct relations between the Paramount Power and the States was in no way affected by the establishment of the Chamber. The Chamber discussed only matters of concern to all the States in which it was desirable in the interests of all-India policy that the Paramount Power should be fully informed of the point of view of the Princes. No question relating to any single State could be discussed in the Chamber, nor

had it any authority to take up any question without the previous consent of the Viceroy.

The Chamber carried on its normal work during the year through a Standing Committee of the Princes. The Standing Committee is the elected executive of the Chamber, which consisted originally of five members and the Chancellor. In 1930 a Pro-Chancellor was also provided for. In 1932 the number of members of the Standing Committee was increased permanently to 7 and for the period of the negotiations regarding Federation to 9. The purpose of this temporary increase was to secure the representation of the lesser States in the Standing Committee. The membership of the Standing Committee is open to every Ruler who is a member in his own right, while the 12 representative members have the right of voting for but not of being elected to the Standing Committee. There are two formal meetings of the Standing Committee every year, in March and in November, at which the Political Secretary is present in his official capacity and discusses personally the questions which have been under negotiation through the Chancellor during the year. But these two formal meetings do not by any means constitute the main work of the Standing Committee. It is the informal meetings of the Committee which the Chancellor convenes at regular intervals that discuss matters of vital concern and decide on the line of action to be pursued by the Princes. At these meetings, questions which any State desires to take up with the Political Department are first discussed, and the Chancellor is then authorised to take

appropriate action either by personal negotiation or by correspondence with the Political Secretary. An example will illustrate the work of the Standing Committee. Last year an important State wrote to the Chancellor informing him that the practice with regard to the issue of licenses for wireless apparatus was unsatisfactory from the point of view of the States generally and desired the Chancellor to take up this matter with the Government of India. On receipt of a request of this nature it is placed on the Agenda of the next informal meeting of the Standing Committee. If the Princes on the Committee decide to take up this matter, the Chancellor writes to the Political Secretary and if the question could not be decided without further discussion it is brought on the agenda of the formal meeting for negotiation with the Government of India. References on all kinds of subjects are received from States, and this has naturally led to the creation of an office for the Standing Committee for the purpose of examining such questions, preparing notes and generally acting as a Secretariat.

The establishment of a separate office for the Standing Committee was a development of importance because (1) it gave to the informal meetings of the Committee a recognised status and (2), it enabled the Princes to take up technical questions outside the range of matters placed before them by the Political Department. A further development of significance was the attendance of experts on behalf of the Princes at the formal meetings of the Standing Committee. Originally only the Princes and the Political Secretary

were present. This put the Princes at a great disadvantage in the negotiations as the Political Secretary had ready at his elbow the files necessary on all questions and further had the benefit of expert advisers. The Princes on the other hand apart from being handicapped because of their lack of familiarity with the technical subjects had neither a secretariat, nor expert advisers when they met the Political Secretary. The Princes therefore demanded that their experts also should be present at meetings and the Rule was accordingly altered by which apart from other advisers or experts, it was declared that the Secretary to the Chancellor should invariably be present at all meetings of the Standing Committee and should be allowed to speak when invited to do so. Now it is customary for the Princes to take their expert advisers to the meeting of the Standing Committee.

Another development, which though recent in origin is also of great importance is the meeting of the Standing Committee officially with His Excellency the Viceroy on important questions. This is a procedure which came into existence owing to the special interest that His Excellency Lord Willingdon takes in all matters relating to the welfare of the Princes. The meetings which took place in 1932 and 1933 proved very useful in clearing many misunderstandings and generally bringing the points of view of the Political department and of the Princes nearer each other.

The Standing Committee as the successor to the Codification Committee on Political Practice has been

mainly concerned with the work that was left over on the 23 points. The attempt of the Committee has been to prepare summaries of the practice as it exists and then amend it to suit changing conditions. When the amendments are agreed upon in the Committee, they are circulated to the Local Governments, States and Political Officers for opinion. The views thus elicited are again placed before the Committee and if approved go with their recommendation for acceptance by the Chamber. Many questions have been dealt with satisfactorily in this manner.

The Standing Committee gets through much of its technical work through Sub-Committees of Ministers, who are appointed *ad hoc* for specific questions. Such Committees may either be informal bodies preparing material for the Princes, or formal Committees with which representatives of Government are associated. An instance of a formal Committee was the one on double income-tax, which consisted of Sir Manubhai Mehta, Col. Sir Kailas Haksar, Sir V. T. Krishnamachari and a member of the Central Revenue Board. An instance of an informal sub-Committee is the one which was appointed last year with Sir C. P. Ramaswamy Aiyar as Chairman to report on the White Paper.

Besides *ad hoc* Committees of this nature, the Standing Committee is advised by two permanent committees of Ministers, one to deal with all political matters which is called the Standing Committee of Ministers and the other a military Sub-Committee consisting of experienced officers from States. Of both

the Chancellor's Secretary is an ex-officio member. The Standing Committee of Ministers has more or less a permanent personnel—at least during the time that I have known it, there has been only one change in membership. During 1932, the members were Col. Haksar, Sir Manubhai, Sir V. T. Krishnamachari, Mr. Abbasi and Mr. K. M. Panikkar. In 1932, the personnel was the same, except that Nawab Sir Liaqat Hyat Khan was added to it. This year, the Committee has been re-elected with the difference that the Nawab of Bhopal has substituted another name in place of Mr. Abbasi, his representative on the Committee and Mr. Surve of Kolhapur has been nominated in place of Sir V. T. Krishnamachari. If in this manner the Standing Committee of Princes has changed its character and become the unofficial executive of the Princes, it was inevitable that the Chamber should also change its character. Under its constitution it was too official and too formal and there was no possibility whatever of free discussion of views or even of a serious attempt to tackle difficult questions. The machinery of the informal meetings of the Princes and ministers came into existence as a natural result. The word informal is misleading. The meetings of Princes and ministers which take place annually before the public sessions of the Chamber are indeed formal gatherings. The vital difference lies in two factors. One, in the informal meeting neither the Viceroy nor the Political Secretary or indeed any British official is present. The Chancellor presides, presents the report of his work for the year, discusses the agenda of the formal session,

places the resolutions which the Standing Committee recommends for being moved in the Chamber and full discussion goes on sometimes for a whole week. The second difference is that ministers and other authorised representatives including Regents of States are entitled to attend and take part in the discussion. In fact the decisions taken at the informal conferences are with the ministers present and taking part. In the Chamber itself this is not so, though what actually happens is that only Resolutions which have been discussed and adopted at the informal Conference come up for discussion in the Chamber.

From what has been said it must be amply clear that the position of the Chancellor has undergone a very radical change during the last few years. He has in effect become the authoritative spokesman of the Princes, their leader and representative in all important discussions. Naturally the Standing Committee had to leave much of its work to the Chancellor and he became the channel of official communication between the Political Department and the Chamber. Besides with the growth of a Princes' Secretariat the Chancellor's position became that of a virtual directing force of the common policy of the Order, a position which neither the Bigger States who have not so far associated themselves with the Chamber, nor the Political Department have fully accepted.

Apart from the Codification of Practice the work that the Chamber has done has been directed towards the single purpose of defining the position of the States

vis-a-vis the British Government. The demand that the relationship subsisting between the Crown and the States and the effects of economic policy of British India on the States should be enquired into was put forward from the very beginning of the Chamber of Princes. Till 1926, however, it did not meet with the approval of the Government of India. In that year the Viceroy Lord Irwin agreed to receive the Princes on the Standing Committee to discuss this question. That conference was in many ways a turning point. As a result of these discussions between the Viceroy and the Standing Committee of Princes, the famous Butler Committee was appointed by His Majesty's Government to enquire into the whole question of the relationship of the States with the Crown. The Committee consisted of Sir Harcourt Butler, who was former Political Secretary, Professor Holdsworth of Oxford and Col. Peel, with Col. G. D. Ogilvie a senior and distinguished political officer, now A. G. G. in Rajaputana, as Secretary. The Standing Committee on their part engaged the services of the Rt. Hon'ble Sir Leslie Scott as their counsel and set up a special organization with Colonel, now Sir, Kailas Haksar, as Director to collect, prepare and arrange the case for the Princes. The four printed volumes of evidence which the Princes placed before the Committee together with the arguments of counsel constitute the most valuable material for the study of the question of the States.

The report of the Committee is perhaps known to most of you. I do not desire to go into controversial

topics but this much I can say that the Report, with its pontifical announcement that Paramountcy must remain Paramount came as a shock to the Princes. The session of the Chamber of Princes in which the Report was considered was almost exciting. But fortunately within a few months the Simon Commission also reported and the Round Table Conference was summoned in London with the avowed object of finding methods of co-operation between the States and British India.

This is not the occasion to discuss the federal scheme that has emerged from the deliberations of the three sessions of the Round Table Conference or to examine what the position of the Chamber of Princes will be under the new constitution. But the problem of the reform of the Chamber has been before the Princes for some time.

In 1930, the Chamber passed the following Resolution in the public session:—

> "This Chamber is of the opinion that the time has arrived to revise its constitution and enlarge its powers".

This is not the place nor am I the person to discuss the projects of reform of the constitution of the Chamber that are in the air. But the circumstances which have made the problem immediate and vital may be alluded to here. As has been mentioned earlier all members of the Chamber have one vote each. Out of the 109 Princes who are members in their own right, only 23

States have a salute of 17 guns and over. The 11 and 9 gun-States alone number 53, who together with the 12 members representing non-salute States constitute a majority in the Chamber even to-day. 69 out of the 109 are States with a salute of 13 guns or less.

The larger States who between nine of them represent more than 50 p.c. of the population area and revenue of Indian India, began increasingly to feel that their interests could never be properly represented by a Chamber in which their influence and voice could be over-ridden by the weight of numbers. This tendency which was noticeable from the very foundation of the Chamber, witness the refusal of Hyderabad, Mysore and Indore to associate themselves with its work, became more pronounced and began to be voiced with increasing emphasis when the Chamber began, by the process which we have analysed before, to assume the direction of the policy of the Princes. The change in the character of the Chancellor and the Standing Committee which began with the informal conference of Princes with the Viceroy in 1926 did not attract much attention at the time. But when in due course the Standing Committee began to claim to be the elected spokesmen of the Princes as a whole, some of the larger States, notably Hyderabad, Mysore, Baroda, Udaipur, Rewa and Indore dissociated themselves publicly from its activities. The joint declaration of Udaipur, Jaipur and Jodhpur on the question of allocation of seats at the informal conference of Princes in 1932, "the *bigger States* bloc" which made its

appearance at the Simla discussions in September 1932 and the weight and influence it pulled at the third Round Table Conference and the subsequent meetings of the Joint Parliamentary Committee indicated the strength of the movement for secession from the Chamber to which public attention was focussed by the announcements of the Maharajas of Kashmir and Travancore that they desired also to be considered as non-Chamber States.

Apart from the predominance of the smaller States in the Chamber which had become obvious with the election of each succeeding Standing Committee, there was also the feeling that the Chamber by assuming directive powers was weakening the tie of direct relationship to which the larger States attached the greatest importance. Naturally, if the Chamber or its Standing Committee became an effective intermediary between the Viceroy and the States, then many questions which are now decided by direct negotiations between the States concerned and the paramount power would be regulated by agreements reached with the Standing Committee. The larger states feel, and legitimately feel, that unless some provisions are introduced in the constitution of the Chamber by which influence proportionate to their interests and importance could be guaranteed to them, they could not allow this tendency to develop any further.

All the same it is not denied by any one that the Chamber as the only institution common to the Princes of India, serves a most useful purpose and with such

modifications in its constitution as are found necessary by the experience of the last twelve years, should prove to be of immense value both to the Paramount Power and to the Princes.